Custody, Access and Child Support in Canada

Putting Children's Interests First

REPORT ON FEDERAL-PROVINCIAL-TERRITORIAL CONSULTATIONS

Presented to the
Federal-Provincial-Territorial Family Law Committee

Prepared by
IER Planning, Research and Management Services

*The views expressed in this report are those of the authors
and do not necessarily represent the views of
the Federal-Provincial-Territorial Family Law Committee.*

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EXECUTIVE SUMMARY

The federal, provincial and territorial governments held nation-wide consultations on custody, access and child support issues from early April to the end of June 2001. Canadians with an interest in these issues contributed their views through some 2,300 feedback booklets, 71 written submissions and 46 workshops, all of which are summarized in this report. The results of the consultations, as presented in this report, will be used to inform the Federal-Provincial-Territorial Family Law Committee's work on its Custody and Access Project as well as the discussions of federal, provincial and territorial Ministers Responsible for Justice. They will also provide valuable qualitative information on recurring issues and themes for a report to Parliament on custody, access and child support to be tabled by the federal Minister of Justice before May 2002.

The following topics were addressed during the consultations:

- best interests of the children;
- roles and responsibilities of parents after separation or divorce;
- family violence;
- high conflict relationships;
- children's perspectives;
- meeting access responsibilities; and
- child support.

The key points raised by participants on each of these topics are described in the following pages.

BEST INTERESTS OF CHILDREN

Respondents were asked to identify what children need when their parents separate or divorce. They suggested the following needs:

- physical safety and emotional, psychological and financial security;
- as great a level of stability and consistency as possible during and after the process of separation;
- their voices to be heard and their integrity to be respected;

- to not feel burdened with responsibility for the separation or for parents' behaviour;
- to not participate in their parents' dispute or in legal or court processes; and
- to feel that their particular cultural and developmental needs are being considered.

Some respondents thought that children need to maintain contact with both parents at all times. Other respondents were of the opinion that, in cases of high conflict between parents or family violence, children's needs are best met by limiting contact with the aggressive or violent parent.

Those in favour of including in the *Divorce Act* a list of factors for determining children's best interests thought that it could provide useful guidance for judges and parents to help ensure that they consider relevant concerns when making decisions on custody and access. Those arguing against including a list of factors said that such a list would exacerbate conflict and competition between parents. They also feared that the use of a list would exclude the consideration of unlisted factors and discourage assessment of the particular circumstances of each family situation. Finally, others thought that establishing a list would neither make court decisions more predictable nor reduce disputes.

With regard to support services, respondents often indicated that existing services should be better publicized and made more accessible to all, regardless of gender or location. According to these respondents, improvements to such services would include the following characteristics:

- Better coordination between community and government services would improve accessibility of services for children.
- A conciliatory approach would be preferable to resorting to the legal system.
- Information, education and counselling and other support services must be readily available to help parents focus on their children's needs.
- More community-based services and mediation services are required, and the number of children's advocates must be increased.

ROLES AND RESPONSIBILITIES OF PARENTS AFTER SEPARATION OR DIVORCE

In response to a question about what factors enable "good parenting," respondents identified a wide variety of issues relating to the parents themselves and their relationship, the support offered to both parents by the legal system, and the various support services in place.

Respondents stressed the need for improved educational services (for parents as well as for the legal profession), support services (such as supervised access centres or "parenting coordinators") and legal aid services. To improve the effectiveness of services, respondents suggested that services be offered in a more coordinated, timely and accessible manner.

Participants were asked whether the terms *custody* and *access*, which are currently used in the *Divorce Act*, should be changed. The main argument in favour of changing the terminology is that the terms *custody* and *access* have negative connotations of ownership and promote the concept of a "winner" and a "loser", which leads to an adversarial process and perpetuates a perceived anti-male bias in the current system. Those opposed to changing the terminology maintained that it is well understood by Canadians and within the legal system, that it is useful in situations in which sole custody is in the best interests of the children (for example, in situations of violence), and that resources would be required to define the new terms.

Some respondents thought that narrowing the definition of *custody* and introducing the term *parental responsibility* would be more appropriate. They felt that a more neutral terminology would encourage parents to divide their responsibilities themselves (without assuming a 50-50 split of responsibilities). Some respondents voiced the following arguments against this proposal: the proposed terminology is too vague and, therefore, may lead to greater conflict and litigation; and children need to have only one primary caregiver, which the term *parental responsibility* may preclude.

Those in favour of replacing current terminology with the term *parental responsibility* highlighted the fact that the term emphasizes parents' responsibilities towards their children as opposed to parents' rights. Some respondents suggested that individual responsibilities must be detailed in the law; while others said such a list of responsibilities would be counter-productive.

Those who preferred the option of replacing the current terminology with the term *shared parenting* said that the presumption of shared parenting gives both parents equal responsibility for parenting, promotes a low-conflict framework for allocating parental responsibilities, and ensures that children have access to both parents and extended family. Respondents who disagreed with this option took the position that the shared parenting model is not always realistic, may have negative effects on children (for example, when family violence is an issue), and does not acknowledge situations in which a parent may not be fit nor willing to care for the children.

FAMILY VIOLENCE

Several respondents indicated that family law legislation should contain three points about family violence:

- a statement that the best interests of children are the first priority;
- a clear definition of *violence* (in particular, the scope of the definition); and
- an allocation of burden of proof (in particular, whether this should rest with the alleged victim or with the alleged perpetrator, and what should be done in the meantime to protect children).

On the other hand, others thought that the current legislation should not be changed. Participants raised the following arguments, among others:

- Strong legislative and procedural processes are already in place to address concerns of family violence. Violence is a factor that is currently carefully considered in court through the "best interests" test;
- Highlighting family violence could lead to increased false allegations of violence. This could lead to inadequate consideration of other factors of significance to the best interest of children;
- Government involvement in resolving issues of family violence should be minimal;
- It is more important to ensure affordable services (such as counselling or supervised access) than focusing on making legislative changes.

Furthermore, some respondents mentioned the difficulty of attempting to define *violence* correctly in legislation and that governments should develop awareness programs and provide training on the realities of family violence to service providers and the legal community (for example, judges).

With regard to the legislative options presented in the consultation document, respondents differed about what is in the best interests of children. Some thought that children's safety should be the priority, while others insisted that the priority was the children's access to both parents. Those who gave priority to the safety of the children supported limiting contact between the children and the violent parent as well as the decisionmaking of this parent unless he or she could prove that such a limit was not in the children's best interests. Those who felt access to both parents should be the priority supported a presumption of "maximum contact," except when there was proof that the parent had been violent towards the children.

Some respondents suggested that the overall approach to services addressing the needs of children in situations of family violence should be based on the following principles: best interests of the children; prevention of violence; sensitivity to cultural differences; ensuring safety; and gender sensitivity. Many people were of the opinion that structural and organizational changes are needed to improve the current provision of services, including the following:

- more community-based services;
- sufficient funding;
- improved coordination of services; and
- greater accessibility to services.

HIGH CONFLICT RELATIONSHIPS

Some respondents said that high conflict situations were, in fact, another form of family violence. They felt that distinguishing between situations of high conflict and those involving family violence implies that a certain level of violence is acceptable. Other respondents thought that high conflict situations are a natural by-product of the divorce process. They said that although parents may be in a high conflict relationship it does not mean that they are not able to care for their children.

Those respondents who agreed that the law should deal with the problem of high conflict relationships generally supported a combination of options 2 and 3 or of options 2 and 4 (from those presented in the consultation document). Both combinations would result in a very detailed agreement about parenting arrangements, which supporters felt would reduce the likelihood of further litigation and conflict between the parents. The two combinations differ on whether that agreement would be achieved through a mandatory dispute resolution process (which some respondents felt would be ineffective in a high conflict situation) or through the courts.

CHILDREN'S PERSPECTIVES

Young people were asked to discuss their views on whether children's perspectives should be considered during discussions on custody and access, and, if so, how this should be done. Both the young people and other respondents indicated that children's perspectives are currently considered to varying degrees, depending on a number of factors.

Some respondents thought that children should not be consulted because their views would not be considered anyway, and that the emotional consequences would be too great. Others added that very often children would not understand the situation well enough to make a decision. According to some respondents, children's opinions, if they are considered, should not be the sole basis for decisions that affect children.

Many young people thought that children should be better informed about their parents' difficult relationship but should remain outside their parents' dispute and should be consulted at the time of separation. Some women's rights organizations and some Aboriginal respondents echoed this position.

Some young people spoke in favour of the possibility of expressing their views to a neutral third party (for example, a mediator). These participants also identified factors that should determine children's level of involvement: age; professional support; ability to provide information; relationship with parents; and emotional well-being. Special needs, the presence of family violence or high conflict relationships, and cultural values should also be considered.

Several respondents emphasized the need to safeguard children's well-being throughout their participation in the decisionmaking process. This would involve the following:

- adequate representation by a children's advocate;
- protection from any repercussions from the parents; and
- information about the reasons for the decisions being made.

MEETING ACCESS RESPONSIBILITIES

Respondents said there are two main issues to be addressed with regard to meeting access responsibilities: denial of access by the custodial parent; and non-exercise of access. Respondents felt that both of these situations were equally detrimental to children's welfare, and proposed that tools such as parenting plans, parental education and counselling be considered as ways to encourage parents to meet their access responsibilities.

Respondents recognized that it would be very difficult to resolve the problem of non-exercise of access through the law. They thought that forcing an uninterested parent to have contact with his or her children would not be in the children's best interests and might even be dangerous.

Respondents did, however, feel that there were some areas in which legislation could be useful in addressing the problem of denial of access, specifically, by means of enforcement orders, alternatives to court-based solutions, and supervised access centres.

CHILD SUPPORT

Respondents provided input on several questions concerning child support.

With regard to calculating child support amounts in shared custody situations, some respondents raised concerns about time or cost being the sole determining factors. Respondents supported transparent guidelines or a formula-based approach for determining the amount of child support to be paid in shared custody situations.

With regard to unusually high and unusually low access costs, respondents thought that both situations should be addressed in child support guidelines and legislation.

With regard to the payment of child support once children are at or over the age of majority, some respondents favoured paying some or all of the child support directly to the children, which would reassure the parent paying the support that the money is being spent on the children. Other respondents were not in favour of direct payment, pointing out that the custodial parent continues to have expenses related to maintaining a home for the children, regardless of the children's age.

PARTICIPANTS' PERSPECTIVES

The consultations uncovered a wide range of views among Canadians based on individual experience, professional opinion and the perspectives embraced by the organizations participants represented. From these opinions, three recurring themes emerged:

- many men's organizations (and other non-custodial parent support groups) supported implementing the recommendations of the Special Joint Committee on Child Custody and Access;

- many women's organizations argued that the consultation process and options did not recognize gender issues and, therefore, that a gender analysis should take place before proceeding;

- many professionals (e.g. lawyers and service providers) said that the term *parental responsibility* had merit as a flexible option that could address many of the concerns raised by other respondents, with or without changing existing terminology in the area of custody and access.

INTRODUCTION

This report is a summary of the results of nation-wide consultations on custody and access and child support issues in Canada.

This summary report was prepared by IER Planning, Research and Management Services, which was retained to support and assist the nationwide federal-provincial-territorial consultations on custody and access and child support. The findings in this report will be used to inform the Federal-Provincial-Territorial Family Law Committee's discussions on its child custody and access project and will form part of the background to the report to Parliament that the federal Minister of Justice will table before May 2002.

The consultation sought specific comment on a consultation document developed by the Family Law Committee, entitled *Putting Children's Interests First: Custody, Access and Child Support in Canada*. In a parallel process, workshops were held in all provinces and territories in Canada, including specific workshops for Aboriginal stakeholders and youth.

REPORT STRUCTURE

The report on the consultations comprises two main parts: the summary report and the appendices.

Summary Report

This report summarizes comments on the options, key messages and recommendations received from Canadians, and reflects their understanding of laws and issues related to custody and access and child support in Canada.

As noted under "Methodology" below, the material summarized in this report was provided through briefs, letters, feedback booklets and workshops. Because of the nature of the consultation process and topics, comments in this report are not attributed to any one person or organization.

Appendices

The appendices are separate reports summarizing the input received at workshops for youth (Appendix A), for Aboriginal people (Appendix B) and in each province and territory (Appendix C). Appendix D contains a list of written submissions and explanatory material received by IER.

IER developed most of the appendices from notes taken at the workshops in each province and territory, supported by notes from IER staff who attended each session, with the exception of Nunavut. Some provinces and territories (namely Quebec, Newfoundland and Northwest Territories) wrote their own report on the consultations that took place and submitted it for inclusion here. The report on youth was compiled by the facilitators of the youth workshops in Winnipeg and Toronto, with support from facilitators of the youth workshops in Moose Jaw and Montreal. Key findings from all these reports are included in the summary report.

THE FAMILY LAW COMMITTEE

The Family Law Committee is a long-standing committee of government officials. Its work supports and is approved by the Deputy Ministers and Ministers responsible for Justice across Canada.

The Family Law Committee is a long-standing committee of federal, provincial and territorial government officials who are well acquainted with family law. The committee has a federal co-chair and a provincial co-chair and reports to the federal, provincial and territorial deputy ministers responsible for justice issues. The committee's work supports and is approved by the Deputy Ministers and Ministers responsible for Justice across Canada.

The Family Law Committee is reviewing legislation and services to find ways to help families work out the best arrangements for children during and after separation and divorce. It has adopted an integrated, child-focused approach to its work. The Family Law Committee's child custody and access project encompasses research, analysis, and policy and program development among federal, provincial and territorial policy advisors and service providers. This project is also looking at the recommendations of the Special Joint Committee on Child Custody and Access. The project is to be completed by spring 2002. The Family Law Committee developed the consultation document to support the consultations on custody and access and child support.

THE CONSULTATION PROGRAM

PURPOSE OF THE CONSULTATION

The purpose of the consultation was to seek advice, input and comments on options related to custody and access and child support.

The purpose of the consultation was to seek advice, input and comments on options related to custody and access and child support in support of the Family Law Committee's custody and access project.

METHODOLOGY

Key elements of the methodology for the consultations included the following:

- design of the consultation program;
- development and distribution of the consultation document and feedback booklet;
- development and use of the workshop discussion guide;
- receipt of briefs and letters from individuals and groups; and
- implementation of the workshops in each province and territory.

Design of the Consultation Program

The Department of Justice Canada initiated a nationwide bidding process for a contractor to help it, in collaboration with the Family Law Committee, design and implement the consultations. IER, an independent consulting firm specializing in consultation and communication since 1971, won the contract.

IER helped develop a coordinated approach to the workshops in each province and territory.

IER presented the Family Law Committee with several options for the design of the consultation program. IER then helped develop a coordinated approach to the workshops in each province and territory. This included writing a logistics guide for the organization of the workshops, a facilitator manual for coordinated facilitation of the discussion topics, and a discussion guide for facilitators and participants at the workshops. More information on the discussion guide is provided below (see "Development and Use of the Discussion Guide"). IER held two facilitator training sessions, one in Prince Edward Island and one in British Columbia, to coordinate the facilitation of the workshops.

The Family Law Committee developed a consultation document entitled Putting Children's Interests First: Custody, Access and Child Support in Canada.

IER received 2,324 completed feedback booklets.

A total of 71 written submissions were received.

Development and Distribution of the Consultation Document and Feedback Booklet

The Family Law Committee developed a consultation document entitled *Putting Children's Interests First: Custody, Access and Child Support in Canada.* Approximately 10,000 consultation documents were distributed by the Department of Justice Canada, the provinces and territories. Copies were also sent to members of Parliament. The consultation document was also available on the Internet and on request from the Department of Justice Canada. Each document included a feedback booklet and a postage-paid envelope to make it easy for people to return their comments. The document was also produced in Braille, and two such copies were requested.

IER received 2,324 completed feedback booklets. The initial deadline for receiving written comments was June 15, but this was extended to July 6. Approximately 55 percent of the booklets received contained identical answers. The key points in the responses, whether submitted once or many times, are included in the main report.

Development and Use of the Discussion Guide

IER developed a discussion guide based on the consultation document to introduce in-person workshop participants to the workshop topics and the discussion questions. There were two parts to the discussion guide: the first included the custody and access topics to be discussed at the workshop; the other listed government services available in each province and territory. The discussion guide was produced in modules so that each province and territory could select topics for discussion at the workshops and the appropriate listings of government services.

Receipt of Briefs and Letters

Many participants in the consultation program provided their comments on custody, access and child support in the form of written submissions. A total of 71 submissions were received by the extended deadline of July 6. These submissions were reviewed, and the key points are summarized in this report. Written submissions received after July 6 were forwarded to the Department of Justice Canada for information and are not included in this report. Appendix D lists the titles and authors of all the written submissions.

Implementation of the Workshops

Workshops in the Provinces and Territories

In all but two provinces and territories, justice ministry officials invited the participants, organized the workshops and arranged facilitation services.

For the workshops in Manitoba and Ontario, IER organized workshops, invited the participants, and provided facilitation services when requested. IER developed initial lists of potential participants with an interest in custody and access and child support issues. These lists were expanded through referrals from initial contacts and from suggestions by provincial, territorial and federal officials. Names of additional participants suggested by some organizations were included in the invitations when it did not result in organizations having more than one representative at each consultation. Potential participants were then contacted by telephone and e-mail to determine interest and availability.

Between one and six workshops were held in each province and territory, for a total of thirty-eight. Eight other workshops were held on youth and Aboriginal perspectives; see below. Representatives from the federal government and the provincial and territorial governments attended each of the sessions. Staff from IER also attended the workshops, except in Nunavut.

Participants invited to the provincial and territorial workshops represented a range of interests in custody and access and child support matters: social service; education; enforcement; legal community; child welfare; women's groups; men's groups; grandparents' groups; and Aboriginal organizations, among others. Approximately 750 people participated in the workshops. The organizations that participated in the in-person workshops are listed in each provincial or territorial report in Appendix C.

The workshops took place between April 10 and June 28, 2001. Each provincial and territorial jurisdiction addressed the topic of roles and responsibilities of parents. Other workshop topics were selected by each province and territory from those listed in the consultation document, as follows:

- best interests of children;
- family violence;
- high conflict relationships;
- children's perspectives; and
- meeting access responsibilities.

Some provinces and territories also held discussions on child support issues.

Workshops for Youth

There were seven workshops for youth.

Seven workshops for youth were held: one organized by the Saskatchewan government in Moose Jaw, and six organized by the Department of Justice Canada: two in Winnipeg, two in Toronto and two in Montreal in June 2001. The 69 youth participants ranged in age from 10 to 17 years. For the workshops organized by the Department of Justice Canada, the participants were initially identified through random calls by local market research firms, and then selected according to criteria that ensured a range of age groups, and that gender, ethnicity and other factors were considered. Appendix A reports on the youth consultation, including the selection process and criteria.

In addition, workshops for youth organized by an independent firm were held in Quebec City, Montreal and Trois-Rivières in May and June 2001. The results are found in the report on the consultations in Quebec in Appendix C.

Workshop on Aboriginal Perspectives

A workshop was held in Ottawa to obtain Aboriginal perspectives on custody and access and child support issues.

A workshop was held in Ottawa to obtain Aboriginal perspectives on custody and access and child support issues. The workshop included opening and closing ceremonies led by an elder of the Bear Clan, and the workshop facilitators were Aboriginal. The following topics were discussed in the workshop: custody and access issues concerning Aboriginal peoples; best interests of children from the Aboriginal perspective; and roles and responsibilities of parents. A total of 18 participants attended. Appendix B is a report on the workshop.

SUMMARY OF THE CONSULTATIONS: WORKSHOPS AND SUBMISSIONS

This section summarizes Canadians' responses to the questions asked in the consultation document. It includes input received through the in-person workshops and written submissions (briefs and feedback booklets). The information presented synthesizes the wide range of opinions put forward by Canadians on these topics.

BEST INTERESTS OF CHILDREN

In Canada, family laws relating to parenting decisions are based on the principle of the "best interests of the child." People making decisions that affect children during and after separation and divorce must take children's best interests into account.

Some, but not all, provincial and territorial laws list specific factors that parents are to look at when making decisions about their children. These factors include children's ages and special needs, their relationships with the important people in their lives, the role of extended family, cultural issues, the history of the parenting of the children and future plans for them.

Currently, the federal *Divorce Act* does not set out factors that parents should consider when determining the best interests of children. Some people think that it should. A list of factors might educate people about the things that they should consider when making decisions that affect their children.

There are varying opinions on this issue. Some say that listing factors would neither increase the predictability of outcomes nor decrease litigation. In fact, in comparing provinces and territories that have a list of factors with those that do not, there is very little difference in the types of custody and access orders issued. Adding a few key factors could be helpful, but having too many might make the list too long and difficult to use.

Respondents were asked whether adding factors to the section of the *Divorce Act* that covers "best interests of the child" would be helpful and, if so, what those factors could be.

Respondents were asked whether adding factors to the section of the Divorce Act *that covers the "best interests of the child" would be helpful and, if so, what those factors could be.*

The topic of best interests of children was addressed with two questions:

- Would adding factors to the "best interests" section of the *Divorce Act* help people make decisions about children that are in the children's best interests?; and
- If factors were to be specified, what should they be?

Specifying Factors in the *Divorce Act*

There were a number of positions presented in favour of and against adding a list of factors to the "best interests" section of the *Divorce Act*.

Reasons for Listing Factors

Arguments in favour of listing factors in the Divorce Act.

Some people suggested that federal legislation that identifies factors to be considered by judges and others is desirable and an improvement in family law. Listing factors in the legislation would do several things:

- greatly assist judges;
- provide guidance for divorcing parents who are developing their own parenting arrangements on what factors they might consider when looking at their children's futures;
- ensure that all relevant concerns regarding the best interests of children are considered in a systematic way within the decisionmaking process;
- compel parents and judges to consider a wider range of factors and family situations when determining children's futures; and
- dispel the mystery surrounding the rationale for decisions and instead promote clear and traceable decisions, leading to better understanding by parents.

Furthermore, participants pointed out that the definition of the *best interests of the child* has to recognize that the notion of the traditional family no longer applies to all families and that different types of families need to be accepted without stereotype.

Participants also suggested that it is important to harmonize federal legislation with provincial and territorial legislation. This would reduce confusion by providing a consistent framework for decisionmaking.

Reasons for Not Listing Factors

Arguments against listing factors in the Divorce Act.

Some people did not agree that the *Divorce Act* should include a list of factors. Their concerns included the following:

- The presence of legislated factors might limit the discretion of judges to deal with the unique situations of divorcing couples;
- There is a risk that significant but unlisted factors would not be taken into consideration;
- There could be problems deciding how to rate different factors for families (e.g. cultural and economic differences);

- A checklist approach would mean that each factor could be evaluated without full understanding of the children's environment or what is at stake;
- Listing the factors might spark a more competitive or contentious discussion between parents, inviting them to aggressively promote their position on each factor; and
- Establishing a list would neither make court decisions more predictable nor reduce disputes.

Some men's and women's advocacy groups said that the question of the rights of custodial and non-custodial parents must be resolved before a meaningful discussion can be had about factors affecting the "best interests of children."

Some men's and women's advocacy groups said that the question of the rights of custodial and non-custodial parents must be resolved before a meaningful discussion can be had about factors affecting the best interests of children. The women's groups taking this position said that the mother's role of nurturer and primary caregiver should be acknowledged. The men's groups taking this position said that both parents should have the right to a shared or equal parenting role (including equal time with their children and equal participation in decisionmaking).

Other respondents proposed alternatives to listing all the factors, including these:

- a general definition of the *best interests of the child*, which could evolve over time and is flexible and easily applied to individual situations;
- guidelines or principles in the *Divorce Act* that help ensure that children's needs and abilities are met; and
- a statement that it is in the children's best interests that decisions about children be made in an atmosphere of collaboration, respect and dialogue, rather than conflict.

Specific Factors

To identify factors that define the best interests of the child that might be included in the federal legislation, respondents were first asked to identify the needs of children when their parents divorce. Their responses formed the basis of the discussion on factors that could be specified in the *Divorce Act*. A table summarizing these factors is on pages 15 and 16.

Stability and Consistency

Children need a safe, stable, healthy and loving environment during separation and divorce.

Although participants acknowledged that each family's situation is unique, they generally agreed that children need a safe, stable, healthy and loving environment during separation and divorce. Specific factors mentioned included the following:

- Parents must show respect for their children;
- Parents must not involve or blame their children for the dissolution of the marriage;

- The children's daily routine, standard of living and relations with the extended family must continue both during and after separation;
- Both parents must have "rules" in their homes (there was disagreement about whether these should be the same rules or whether each parent could have his or her own);
- Children must have a clear idea about the time they will spend with each parent;
- Parents should inform children of the parenting arrangements ahead of time;
- Parents should follow through as much as possible with arrangements they have made with the children; and
- Stability in the children's lives outside of the family—in the community, schools and day care—must be maintained.

Health and Safety

Children must live in an environment that is calm and free from conflict.

Participants strongly emphasized safety. Children must live in an environment that is calm and free from conflict. However, participants disagreed on what safety entails. Some people said that children's safety refers to their whole environment: physical, emotional, psychological and financial, as well as the assurance that basic needs, such as housing and medical care, will be met. Other people focused on the importance of keeping children out of any disagreements, conflict and, in some cases, violence between parents.

When children's safety is compromised, measures to protect children must be in place and enforced. There was disagreement, however, about the types of measures that are appropriate when abuse is alleged but has not yet been investigated.

Children Should Not Carry Any Burden

The children's integrity—both respecting their own lives and views and ensuring that they do not feel the burden of responsibility for the separation or divorce—also came up in discussion.

The children's integrity—both respecting their lives and views and ensuring that they do not feel the burden of responsibility for the separation or divorce—also came up in discussion. Respondents felt that children's burdens would be minimized if the following occurred:

- parents communicated openly and honestly with their children throughout the divorce process;
- children were heard and had the opportunity to express their own opinions (issues related to children's perspectives are discussed starting on page 61);
- appropriate services and intervention were available for children to help them live with and adapt to the separation;
- parents ensured that their children do not take responsibility for their parents' well-being;

- parents acknowledged that children need time to grieve for the separation of their family;

- children were not made to be mediators or messengers, forced to report to and from the other parent;

- children were given permission to love both parents without guilt or fear of recrimination (therefore, it is important that parents refrain from commenting negatively about the other parent in front of the children);

- children did not have to choose between parents; and

- children did not have to worry about adult problems, such as money or child support.

Extended Family

Parents must allow their children to care for any new partners and their new extended family while respecting the importance of the children's ongoing contact with siblings and existing extended family.

Parents must allow their children to care for any new partners and their new extended family when it is safe to do so and while respecting the importance of the children's ongoing contact with siblings and existing extended family. Extended family members can provide the necessary support and continuity in children's lives; however, they must also be aware of children's need for ongoing communication and support, free from conflict. The Yukon *Children's Act* was held up as an example of how to address these issues in legislation. The Act has been amended to include grandparents among those who can apply for custody of and access to children. This change is especially important in the North because in First Nations communities, grandparents are actively involved in raising their grandchildren.

Protection from Conflict and the Court Process

Children should be protected from ongoing participation in the legal system.

Children should be protected as much as possible from ongoing participation in the legal system, and should not be forced to take on adult responsibilities. It is vital that parents not use children as leverage or "pawns" to gain control of the situation. Children should be also protected from witnessing any kind of conflict or violence.

Cultural and Developmental Needs

It is important that children develop positive self-esteem and their own cultural identity.

Children's ever-changing developmental needs are a factor, and it is important that children develop positive self-esteem and their own cultural identity. Respondents felt that children must have the opportunity to learn from both parents about their cultural backgrounds. Respondents also mentioned that the concept of the "best interests of the child" is foreign to many immigrant families, because their ideas about children's upbringing are often based on different cultural customs.

Northern and Aboriginal Communities

Several factors were raised that deal specifically with the needs of children in northern and Aboriginal communities:

- There is greater deference towards children in the North and they traditionally have more input into where they go after divorce or separation;
- Many children are not registered at birth and have trouble throughout their lives accessing resources;
- Traditionally, it is considered appropriate and better for children to reside with their mother; and
- A large part of the population moves often, either to or from the North, which can create problems for children when their parents separate or divorce. One parent may decide he or she no longer wants or is able to remain in the North, or he or she might be forced to leave to find work.

Parents' Access

Strict adherence to access agreements versus flexibility.

There were diverging views about parents' access to children. While some people said that parents must adhere strictly to the access arrangements, others felt that there should be flexibility to change the agreement when necessary.

Some people said that children need "equal access" to and maximum contact with both parents, unrelated to financial issues. These people said that in "normal" cases (in which abuse does not exist), children want to be with both parents. Furthermore, some respondents said that there should be a shared parenting arrangement unless there was clear evidence that this would not be in the best interests of the children.

Other suggestions made in relation to access included the following:

- Both parents should be committed to staying geographically near one another to enable children's access to and involvement with both parents;
- Maximum contact must be balanced with the need to provide a stable home for the children; and
- In joint custody arrangements, a certain amount of flexibility is required so both parents can be responsive to children's activities and needs.

Support Services

Improvements and changes were suggested regarding legal, educational and emotional support services.

For children's best interests to be met, the appropriate support services must be available. Improvements and changes were suggested regarding legal, educational and emotional support services, specifically that the various community and government services need to be better coordinated to ensure all services are accessible to children. The Child and Youth Network in Cape Breton was cited as an example of this coordination. Adequate access to services in all communities—urban, rural, northern and reserve—was also emphasized.

Respondents said that the family law system must be dedicated to the children's best interests. Such a system should do the following:

- emphasize a conciliatory approach over the current adversarial process;
- encourage parents to make decisions quickly, avoiding a lengthy process and minimizing disruption of children's routines;
- contain a "standard order" or "default position" to counteract parents' unwillingness to make timely custody and access decisions (however, such a temporary order would establish a status quo in the law, which may be unsafe for some children or parents);
- provide adequate resources, such as sufficient legal aid, parental assessments and children's needs assessments, to ensure informed and effective decisionmaking;
- be sensitive to cultural issues;
- acknowledge that the timing and deadlines associated with legal processes do not take into account the inaccessibility of legal aid and support services for many Aboriginal communities;
- provide children with a voice to express their views on time-sharing and parenting arrangements (for example, through their own lawyer, counsellor, social worker or elder);
- mandate a periodic review of the parenting arrangements to ensure that the best interests of the children are still being met; and
- facilitate the mediation and settlement of parental break-up outside the courts.

Changes to the school curriculum.

With regard to educational services, respondents suggested changes to the school curriculum that would support children, including the following:

- courses on separation and divorce issues; and
- proactive educational programs for children of separating parents so they can understand relationships and develop life skills.

Programs to educate parents and service providers.

People also suggested programs to educate parents and service providers on the impact of separation and divorce on children. These are discussed in more depth below (see "Awareness of and Improvements to Services").

With regard to emotional support, respondents made the following suggestions for services:

- additional information resources (in the appropriate language) that would support children;
- a mentoring program for children (either with children from intact families or, as youth participants suggested, with children of divorced parents);
- support groups for children who relocate to another community and lose their existing social circle;
- counselling and mediation for parents and children;
- community-based clinics and family conflict resolution services (such as the pilot project in Durham Region in Ontario);
- profiling of families so they can be referred to agencies such as the Children's Aid Society (when necessary) and other services (such as counselling and education) as needed to address the children's needs;
- mandatory counselling for children who have been exposed to high levels of conflict;
- efforts by parents to ensure that children feel secure in their homes, and do not fear being "taken away" by social service agencies;
- the "circle" approach, which is a way to ensure equal balance of power between service providers, families and elders when discussing and assessing children's best interests; and
- assurance that, for Aboriginal children, any psychological assessment or therapeutic mediation involve an elder to ensure cultural differences are acknowledged.

The Opinion of Youth Participants

Participants in the workshops described how parental separation and divorce affect their lives. On the one hand, they identified their disapproval of parents who are unable or unwilling to resolve their differences. As one participant explained, "I still love my parents but I have to understand that's how it is. It's hard to respect parents because of their behaviour."

On the other hand, participants seemed to accept that not all relationships are successful and that some do not continue. Many participants were able to identify positive aspects of divorce, such as increasing one's independence, learning from mistakes and becoming a stronger person. They expressed concern that parents did not always work hard enough on their relationships, both before and after the divorce. Many of the youths acknowledged that it is now harder to trust adults. Some participants were clearly burdened by their parents' divorce and had assumed or were given responsibilities beyond their years (e.g. involvement in financial decisions). One participant advised the other youths, "You have to look after your mother, because your dad's not there anymore."

Young people are looking to parents and policy makers to create effective and responsive services that support children when parents no longer live together.

Young people are looking to parents and policy makers to create effective and responsive services that support children when parents no longer live together. They expect child support obligations to be fulfilled. They want to learn skills that will enable them to contribute to the decisionmaking process. They expect professionals to be available, youth-oriented and responsive to their needs. They worry about the future and their ability to be successful in relationships. They are searching for effective role models and want parents to take more responsibility for preparing them for adulthood.

More information on the results of the youth workshops can be found in Appendix A.

Table 1: Factors That Could be Included in the "Best Interests of the Child" Section of the *Divorce Act*

	Factors
Related to the children themselves	Culture, ethnic and religious or spiritual background* Language Stability Healthy and loving environment Health* Special needs* Academic needs Continuity of daily routine Similar standard of living Predictable time spent with both parents Maintaining same school and day care Freedom from conflict Calm environment Physical, emotional, psychological and financial security Adequate housing and medical care Views and preferences* Culture and traditional knowledge (for Aboriginal children) Remaining in current neighborhood Close proximity to both parents Not worrying about adult issues (e.g. money or child support) Not forced to take on adult responsibilities (i.e. for siblings) Continuation of ongoing activities Age and stage of development* Development of strong self-esteem Not afraid of being "taken away" by social service agencies Personality and ability to adjust* Current and future educational requirements*

Table 1: Factors That Could be Included in the "Best Interests of the Child" Section of the *Divorce Act* (cont'd)

	Factors
Related to the children's relationships with others	Relationship with other members of the family* Relationship with the wider community* Relationship with friends Relationship with siblings* Relationship with parents* Relationship with elders Relationship with grandparents on both sides of the family Relationship with any person involved in the children's care and upbringing* History of children's relationships Equal access to both parents (when abuse is not an issue) Ability to care for parents' new partners and new extended family
Related to the parenting of the children in the past	Appropriate protective measures when abuse is alleged (not defined) History of the parenting of the children* History or pattern of violence Past conduct of parents that is relevant to their parenting abilities*
Related to the future of the children	Periodic review of parenting arrangements to ensure they are still meeting the best interests of the children Ability of parents to meet ongoing and developmental needs* Parent's ability to form and follow through with a plan for his or her children Ability of parents and other involved people to cooperate* Potential for future conflict* Potential for future violence affecting the children*
Additional factors to be considered	Parental respect Parents keeping children out of interparental conflict and violence Parents not blaming children or making them feel responsible for the divorce Parents maintaining similar rules for the children and respecting each other's rules Parents respecting arrangements to spend time with children Parents not using children as messengers or mediators or as pawns or tools to influence the other parent Parents communicating openly and honestly with the children Supervised access that meets California's standards on safety Protection for children during participation in legal process Child advocate (e.g. lawyer, counsellor, social worker or elder) Appropriate and accessible services for children Appropriate and accessible services for parents Parents committed to staying in geographical proximity to facilitate access Parental flexibility so that children's needs and activities come first Legislation that promotes and facilitates mediation rather than the court system for settling disputes about custody and access

* Identifies factors highlighted in the consultation document and agreed with by some participants.

ROLES AND RESPONSIBILITIES OF PARENTS

What is the best way to define parental responsibilities after a separation or divorce to ensure that the best interests of children are considered?

This topic looks at how best to define parental responsibilities after a separation or divorce to ensure that the best interests of children are considered.

When parents separate or divorce, they must work out how they will continue to carry out their parenting roles and responsibilities. Most separating and divorcing couples are able to agree and work out their own parenting arrangements. Others find it difficult to agree on such issues as where the children will live, and who will be responsible for their day-to-day needs, schooling, religious education and sports activities. It is even harder for parents to make decisions about their children when there is mental illness, substance abuse or violence between the parents or directed at the children.

The following questions addressed the topic of roles and responsibilities:

- What factors enable good parenting after separation or divorce?;
- How aware are you of existing services in your community? How could these services be improved?; and
- Would using terms other than *custody* and *access* make a difference in the way parenting arrangements are determined after separation or divorce?

Respondents also considered the following five options for changing the terminology used in legislation relating to separation and divorce:

- keeping the current legislative terminology;
- clarifying the current legislative terminology by defining custody broadly;
- clarifying the current legislative terminology by defining custody narrowly and introducing the new term and concept of *parental responsibility*;
- replacing the current legislative terminology with the new term and concept of *parental responsibility*; and
- replacing the current legislative terminology with the new term and concept of *shared parenting*.

Factors Enabling Good Parenting After Separation or Divorce

To identify factors enabling good parenting after separation, some people began by defining *good parenting*. They felt that children's needs would remain much the same after a separation or divorce—therefore, parents' responsibility to fulfil those needs would remain unchanged. These respondents acknowledged, however, that some parents would be taking on different roles (in some cases, roles that are new to them; in other cases, having more responsibility) in fulfilling those needs, and that they would need to develop new skills.

Some women's groups said that a thorough gender analysis of parenting issues is required to ensure that family laws are congruent with Canada's national and international commitments to gender-based policies and laws, and that the results of that analysis would be a basis for good post-divorce parenting.

Some advocates for non-custodial parents said that implementing the recommendations of the Special Joint Committee on Child Custody and Access would enable good post-divorce parenting.

Factors that enable good parenting are related to:
- *the parents;*
- *legislative support; and*
- *other support.*

Many factors that enable good parenting after separation were identified. They relate to three areas:

- the parents themselves;
- legislative support; and
- other support available to parents.

Respondents raised many points relating to the parents' role in meeting their children's needs, and what those needs would be during separation and divorce. These points are addressed starting on page 7.

A table summarizing all of the factors can be found at the end of this chapter (page 37).

The Parents

With regard to the parents themselves, respondents identified many factors that would enable good parenting after divorce:

- communication;
- cooperation;
- maturity;
- flexibility;
- willingness to keep the peace;
- ability to come to an agreement (either through mediation or through the court system) about roles and responsibilities;
- willingness to respect the agreement;

- ability to separate personal issues (dealing with former and current relationships) from issues that touch on their children's well-being;
- ability to take responsibility for mistakes and willingness to try again;
- acknowledgment of the existence of cultural differences in child-rearing practices;
- validation of the parenting abilities of men, as well as of women with disabilities and gays and lesbian women;
- acknowledgment that a parent is not replaceable by a new partner or extended family;
- consideration of the specific needs of Aboriginal Canadians (a more in-depth look at the concerns of Aboriginal Canadians is provided in Appendix B); and
- acceptance of children having access to both parents.

Legislative Support

Some people said that a legal system that recognized both parents as equally capable and needed by the children would support good parenting. Others said that the law must take into account women's social and economic disadvantage, and argued that the image of the father as an ideal nurturing parent is often inaccurate.

Other points made with regard to the law were the following:

- The law must be flexible enough to recognize that some parents are not interested in parenting, and that forcing them to be involved in their children's lives would be detrimental to the children;
- The legislation must specify the need for a parenting plan that explicitly sets out each parent's roles and responsibilities. This would help parents agree and understand their responsibilities;
- Child support should begin as soon as possible and the parent receiving support should be open about how he or she uses child support funds (a more in-depth discussion on child support can be found starting on page 72); and
- Both parents should have and be made to promote adequate access to the children (a more in-depth discussion on access can be found on page 66).

Other Support Available to Parents

Some respondents said that good parenting implies that parents must seek out external support for themselves (and for their children) during separation and divorce. Respondents' suggestions about the types of services that would be helpful are discussed below.

Awareness of and Improvements to Services

People were aware to varying degrees of the services available in their community. Most felt that those services are not well publicized, nor do they adequately meet the needs of parents during separation or divorce.

However, the opposing view was also expressed. Some people said that, as people enter freely into marriages, they are solely responsible for their own well-being after the marriage dissolves. Others said that if shared custody were the norm and deterrents were put in place against false accusations of abuse, existing services such as legal aid, counselling, access centres, child advocates and alternative dispute resolution would be unnecessary.

People calling for more services listed three as the most necessary: educational services, support services for parents and children, and legal services. Respondents also identified issues relating to service provision and the characteristics of "ideal" services.

Education

Respondents said that educational services were needed for parents, lawyers, judges and police officers.

Respondents said that educational services were needed for parents, lawyers, judges and police officers. Suggestions for the types of education that should be provided included the following:

- courses on parenting skills and, in particular, post-divorce parenting skills, such as understanding the impact of divorce on children and recognizing and promoting children's best interests (the program Positive Parenting From Two Homes from Prince Edward Island was given as an example);
- courses on communication skills;
- education for parents in family law (federal, provincial and territorial);
- education for high-school-age children on parental roles and responsibilities (as a preventative measure); and
- information and training about the division of parental roles and responsibilities (some people said that these should be made mandatory).

Several respondents suggested that a national clearinghouse for information on parent education should develop guidelines on content and best practices and undertake consistent national evaluation of existing programs. Others recommended mandatory education for parents before they are permitted to begin court proceedings, pointing to Alberta's successful Parenting After Separation program as an example.

Support services:
- *counselling;*
- *alternative dispute resolution mechanisms;*
- *mentors;*
- *centres for support;*
- *traditional knowledge and practices; and*
- *informal support networks.*

Support Services

The suggestions for support services that should be provided to parents included the following:

- counselling;
- alternative dispute resolution mechanisms such as mediation (including using elders as mediators for Aboriginal families);
- the video *For the Sake of the Children*, originally developed in Manitoba, which respondents in Prince Edward Island found to be particularly useful;
- a mentor for parents and children: someone who has been through a "successful" divorce (one that involved little conflict);
- a parenting coordinator who would help parents allocate and fulfil their parental responsibilities, as well as manage any changes to these responsibilities that might become necessary over time;
- more centres for supervised access and exchange of custody, the mandate for which should be broadened so they can also be a "window" into other community-based and legal services;
- centres for multidisciplinary assessment of high conflict situations;
- help for parents with court orders to work out issues as they arise and ensure that the orders are followed (the California Special Masters program was cited as a possible model for such a service);
- traditional knowledge and practices as a meaningful alternative to the court system for Native Canadians; and
- elders, traditional healers and medicine people as alternatives to psychologists, social workers and other professionals who address the breakdown of Native families.

Respondents also emphasized that parents must develop informal support networks of friends and family.

Legal services:
- *legal aid;*
- *unified family courts; and*
- *continuity.*

Legal Services

With regard to legal services, people highlighted the need for the following:

- access to legal aid for family law cases (in most provinces and territories, legal aid is primarily for criminal law cases);
- more funding for legal aid so that it can be more widely available;

- cost-effective alternatives to legal aid (such as paralegals);
- expansion of unified family court programs; and
- continuity in the court process and, in particular, in the presiding judge (to ensure consistency and familiarity with the case).

Handle separation issues and custody issues in two distinct agreements.

Other respondents advocated handling separation issues and parenting issues in two distinct agreements. This would allow parenting issues to be settled rapidly (which would stabilize the situation as quickly as possible for the children involved), without getting mired in the specifics of the separation agreement. Respondents said that this would address the fact that separation agreements are often complicated and negotiations about them prolonged due to financial issues, particularly when small family businesses are involved.

Service Characteristics

Services should be:
- *timely;*
- *equally available to all;*
- *accessible regardless of location; and*
- *appropriate for the clients' language and culture.*

Respondents stressed that services should be timely and focus on early intervention to prevent high conflict. However, they also felt that follow-up programs are necessary to review the post-separation parenting situation and resolve conflicts as they arise. Services should be available equally to women, men, children and members of the extended family. Some people added that gay- and lesbian-friendly services should also be available.

Respondents said that services should be culturally sensitive (to the needs of First Nations people, among others), available in the appropriate languages for the province or territory and clientele, and available in both urban and rural communities (the section below on services in rural, remote and northern areas addresses the needs of non-urban Canadians in more depth).

The following were other suggestions about the characteristics of services:

- Sign language interpretation and documents in Braille should be available;
- Services should be available at low or no cost because of single parents' reduced disposable income;
- An allowance for child care and transportation costs should be provided to improve accessibility;
- Services should be designed specifically for families with violence, since services that are appropriate for non-violent families are inappropriate, or even dangerous, in situations of violence; and
- Parents who are in conflict should be able to attend separate sessions, rather than be forced to participate in the same group.

Services in Rural, Remote and Northern Areas

Respondents in rural and remote areas and the North pointed out that there are many issues particular to the needs of non-urban Canadians. They had specific concerns, including the following:

- the distance they have to travel to access services;
- their cultural and language needs, which may be different than those of people in larger cities;
- the drawbacks of group work in small communities and the need to maintain privacy;
- the general lack of police services (for enforcing orders, for example); and
- the difficulty that circuit courts have in gathering adequate information before ruling on family law cases (because the court is in a community for such a short time).

Accessible legal advice, timely information, information in appropriate languages, and affordable services are needed in rural and remote areas.

Respondents said that accessible legal advice, timely information, information in appropriate languages, and affordable services are needed in rural and remote areas. Respondents also felt that making referral and support systems more accessible would improve things.

Specific suggestions for addressing service needs in northern communities included the following:

- broadening the mandate of the existing Nunavut maintenance enforcement office to include all family law issues;
- developing a core group of community mediators to support separating and divorcing parents (some respondents said that the existing justice committees might be a source of mediators; others said that this would be inappropriate because the committee members are overburdened, not properly trained and are primarily older men who often do not fully understand the effect of separation and divorce on women);
- increasing the number of lawyers specializing in family law in remote regions of Canada; and
- increasing the number of trained Inuit social workers in Nunavut.

Delivering Services

Alternative methods for delivering services should be considered.

Alternative methods for delivering services should be developed, particularly for educating parents. Suggestions included using the Internet, electronic kiosks, and existing community, medical and access centres to distribute information. There is also a need to improve the coordination and promotion of services, and the coordination among levels of government. The Child and Youth Network in Cape Breton was cited as an example of a successful service coordination project.

Some people suggested a "wraparound approach" to service delivery that would include enhancing a family's strengths, identifying areas for improvement and building on the family's needs. Family members would have access to community services through a single "window," and could decide from which agencies they would receive the necessary services.

However, respondents also recognized that funding constrains the delivery of existing and new services. Due in part to a lack of funding, many existing services rely too heavily on volunteers.

Using Terms Other Than *Custody* and *Access*

Respondents raised a number of points both in favour of and against using terms other than *custody* and *access* to describe parenting arrangements after separation and divorce.

Points in Favour of Change

Some respondents said that the current terminology contributes to conflict between parents.

Some respondents said that the current terminology contributes to conflict between parents and to the breakdown of access agreements. Other respondents supported changing the terminology because they felt it would do the following:

- be easier for ordinary people to understand and, therefore, less intimidating;
- reflect the concept of co-parenting, which is not currently the case;
- reflect the principle of the "best interests of the child";
- remove the implication that children are goods to be allotted to one parent or the other;
- emphasize the parents' roles in meeting their children's needs and doing what is right for the children, rather than addressing the parents' rights;
- have a strong impact on how courts and legal professionals approach family law issues in the future; and
- avoid giving the impression that there is a winner and a loser.

Points Against Change

Changing the existing terminology would have no practical effect for people who are divorcing.

Those who were against changing the existing terminology said that doing so would be a pointless exercise unless the underlying philosophy was also changed. They felt that changing the terminology would have no practical effect for people who are divorcing. Furthermore, they felt that Canadians recognize and clearly understand the terms *custody* and *access*. Respondents also emphasized that these terms need not have negative implications if parents were to suitably define them and establish a parenting plan and solve problems together.

Other points against changing the current terminology were as follows:

- It is effective for the vast majority of reasonable parents. Those parents who are unreasonable will continue to be in conflict regardless of the terminology in the law;
- A key cause of conflict is child support; therefore, this issue should be addressed directly;
- Changing existing terminology would undermine the current body of case law, which increasingly takes violence and abuse into account; and
- Changing the existing terminology would not effectively address parent-child relationship problems, because the law cannot compel a meaningful relationship between parents and children.

Criteria for New Terminology

Some respondents proposed criteria to guide the selection of any new terminology:

The legislation should focus on meeting the needs of children.

- The legislation should focus on meeting the needs of children. Some respondents suggested using a "safety template" to ensure that the children's emotional, physical and financial safety is paramount. Others pointed out that if the legislation is to mention the best interests of children, it should also mention factors that are *not* in children's best interests. In addition, all orders should be based on a careful examination of the family situation and parents' behaviour. Some respondents highlighted the importance of explicitly addressing violent situations in light of children's best interests, and suggested that recognizing the mother's role as primary caregiver ensures children's best interests are met by allowing for continuity in care and bonding. Others suggested that key issues such as violence, culture and language could be addressed in a preamble to the *Divorce Act*.

The legislation should not presume that one form of parenting is ideal.

- The legislation should not presume that one form of parenting is ideal. Rather, the legislation should acknowledge the unique situation of each family by, for example, allowing effective responses to the needs of families experiencing violence or with one parent who is uninterested or uninvolved. The legislation should also allow for interim agreements while the parents develop long-term plans, and for the evolution of agreements over time as the children mature and their needs change. Some respondents suggested that agreements should include a specific review date to allow agreements to evolve; this review should include a third-party interview with the children.

The terminology used in the legislation should be clearly defined.

- The terminology used in the legislation should be clearly defined. Some respondents suggested that it should also acknowledge that both parents are in theory equally capable of parenting their children, and it should allow the parents to clearly allocate parenting roles and responsibilities between them. The new terminology should clearly separate parental roles from the concept of physical custody. Any changes should improve on the status quo, rather than be change for the sake of change, and should be based on the popular understanding of the words rather than on fad terms or ones from other countries, which may not necessarily mean the same thing in Canada. Some respondents said that the legislation should strongly encourage parents to use alternative dispute resolution mechanisms when developing agreements and go to court only as a last resort.

Changes to the Divorce Act *would affect other laws.*

- Respondents pointed out that changing the *Divorce Act* would affect other federal, provincial and territorial laws. They also noted that all public and private entities (such as insurance companies, schools and health care providers) should have to recognize and abide by these terms, once they and their implications for custody allocation are determined. The new legislation should be accompanied by a prompt and affordable method for enforcing agreements. Education and tools (such as lists, models and sample agreements) for children, parents and legal professionals would also be necessary to ensure successful implementation.

The new legislation should address the effect of immigration status on divorce proceedings.

- Some respondents said the new legislation should address the effects of immigration status on divorce proceedings, explaining that some immigrant women accept less than ideal custody arrangements because they are afraid to be involved in the justice system and afraid of deportation.

In addition to these points, some respondents suggested that before changing the terminology further research be done on the parenting initiatives in Minnesota, Australia and New Zealand that take gender into account.

Other respondents argued that the only change necessary was to implement the 48 recommendations of the Special Joint Committee on Child Custody and Access.

Family Law in Northern and Aboriginal Communities

Southern law, regardless of the terminology used, is not appropriate for the culture and realities of Northern life.

Respondents from northern and Aboriginal communities raised several concerns about the application of family law in their communities and the implications this has for both parents and children. In general, respondents said that southern law, regardless of terminology, is not appropriate for the culture and realities of northern life. For example, none of the proposed changes to the *Divorce Act* recognize traditional Aboriginal methods of caring for children after separation or divorce, such as adoption by grandparents.

Respondents made the following specific points:

- The concept of "best interests of the child" is inherently southern and therefore difficult to translate into northern Aboriginal languages;
- Using "custody and access" to set parameters on the relationship between parents and children is not congruent with Aboriginal culture;
- A large percentage of relationships in the North are common-law; therefore, any laws on the break-up of families and the future of the children involved must address these types of relationships;
- Power imbalances often occur when a relationship ends (especially crosscultural relationships); when one parent is Native and the other is not, the non-Native parent is generally more familiar with the legal system and, therefore, willing to use it rather than traditional methods;
- Canadian law assumes children to be property, which is contrary to the way in which Aboriginal people view children; and
- Many Aboriginal people in the North associate the court system solely with criminal justice matters and would not turn to it to resolve social or family law issues.

Finally, respondents from northern communities pointed out that, for them, a far greater concern than terminology is being subject to southern law without having the resources to implement it effectively.

A far greater concern than terminology is being subject to southern law without having the resources to implement it effectively.

Options for Legislative Terminology

Many arguments were made in support of the various options, both during the in-person workshops and in written submissions. The advantages and disadvantages of each option are discussed below, followed by alternatives for wording. A summary of the predominant themes related to terminology is presented on page 36.

Option 1
Keep the current legislative terminology.

Those in favour of keeping the current legislative terminology echoed the points made in the previous section ("Using Terms Other Than *Custody* and *Access*"), and provided the following reasons for their position:

- The current terminology is clear and well understood throughout society and the legal system;

- Changing the terminology would require courts to spend time and resources defining the meaning of the new terms, and might have far-reaching implications for the allocation of child support (which is based on the custody arrangement);
- The existing terminology is helpful in situations of family violence or when one parent is uninterested in parenting, because it allows for sole custody;
- The existing terminology is flexible and can be adapted to various situations;
- The current terminology is easily translated into Inuktitut, whereas other suggested terminology is not;
- Decisionmaking power should remain with the primary caregiver (i.e. the person with whom the child lives) because joint decisionmaking power when one parent is the primary caregiver (for example, as proposed in option 3) is usually unworkable;
- It is necessary to retain the word *custody* because it is used in the Hague Convention on the Civil Aspects of International Child Abduction, an important tool for parents when the other parent takes the children from the country without permission; and
- Some respondents feel that the situation could best be improved by explaining what the existing words mean, rather than by introducing new words.

Those who did not want to retain the current legislative terminology also reiterated points related to the best interests of children, as well as arguing the following:

- The words *custody* and *access* have negative connotations of ownership and winning and losing, limit the contributions of non-custodial parents, and are based on an adversarial premise;
- The French equivalent of *access*, *droit de visite*, implies that the non-custodial parent is merely a visitor in his or her children's lives;
- These terms have different definitions in different family law situations (which is confusing), and presume that parents will not be equal participants in raising their children after a divorce;
- The terms are inflexible and interfere with parents trying to address their unique situations;
- Keeping the existing terminology would not foster the desired change in attitude—that is, focusing on the best interests of children; and

- Some criticize the existing terminology on the grounds that it does not reflect the idea that both parents have parental responsibilities.

Some organizations emphasized the following:

- Options 1 through 4 are unacceptable because they do not address the anti-male bias of current legislation and generally place men at a disadvantage with respect to playing a meaningful role in the lives of their children; and

- Sole custody should never be an option, as it becomes a weapon for one parent to use against the other and is not in keeping with the recommendations of the Special Joint Committee on Child Custody and Access (for this reason, these organizations did not favour options 1, 2 or 3).

Some women's organizations also expressed reservations about options 1 and 2 because these did not sufficiently address violence, gender and primary caregiver considerations.

Option 2
Clarify the current legislative terminology: define *custody* broadly.

Those in favour of clarifying the current legislative terminology and defining *custody* more broadly felt that this could result in a definition of *custody* that is acceptable to all stakeholders. They also felt that a broader definition would allow more flexible responses to unique family situations. Respondents emphasized that the new definition of *custody* should include parental roles and responsibilities. In addition, some respondents said that parents should then be allowed to submit a list of roles and responsibilities they would be willing to assume.

During the discussion, people in favour of option 2 reiterated many of the points made in favour of option 1 (keeping the current terminology).

Those against broadening the definition of *custody* said that this option did not address their concerns about the negative implications of the term (such as ownership, and winning and losing) or the need for new attitudes about parenting after divorce focused on the best interests of the children. These respondents said that a broader definition would be more ambiguous than the existing terminology and would continue to promote an adversarial relationship between parents.

In their rejection of option 2, these respondents reiterated many of the points made against option 1.

Option 3
Clarify the current legislative terminology: define custody narrowly and introduce the new term and concept of *parental responsibility*.

Those in favour of this option raised many positive points about the term *parental responsibility*:

- It is neutral (it does not imply or assume a 50-50 distribution of parenting responsibilities);
- It empowers both parents and accommodates different parenting styles and interests;
- It is flexible and can be applied to many situations;
- It is a less emotionally laden term than those proposed in other options;
- It effectively describes the reality of parenting after divorce;
- It gives form to the involvement of both parents, which is vital in the minds of those who agree that co-parenting must be at the heart of the chosen approach;
- It could be easily understood and defined by parents; and
- It promotes the best interests of children.

Those in favour of option 3 said that the term *parental responsibility* encourages parents to resolve their own division of responsibilities through recourse to mediation, parenting plans and ongoing communication. However, these respondents stressed that ongoing communication between the parents is not required when this is unproductive, and recourse through the courts is still an option when allocating parenting responsibilities. Respondents also said that, because the term focuses on parents' responsibilities rather than rights, it promotes the best interests of children. Also, the term does not force children to choose one parent over the other as primary caregiver and reduces the chance of parental alienation, all of which is in children's best interests. They further believe that option 3, more than the others, can provide a tailor-made solution, leaving the courts free to allocate parenting responsibilities in detail when this becomes necessary.

Some respondents favoured something midway between options 3 and 4, wanting a solution that retains the decisionmaking power of both parents while stressing the need for the court order to specify in detail how parental responsibilities are to be exercised, whatever decision is made regarding the residence of the child.

Those in favour of option 3 supported a narrow definition of *custody* because it limits the meaning solely to the physical residence of the children, while explicitly recognizing that both parents have other roles and responsibilities to fulfil with respect to their children.

Those against option 3 raised several issues with the term *parental responsibility*:

- The term is vague; therefore, it might cause greater conflict and litigation, putting additional pressure on the court system;

- The concept of allocating parental responsibilities to meet the best interests of the children is based on the parents agreeing on those best interests, which is not always the case;

- Sharing parental responsibilities might result in a lack of long-term planning about the children's needs (because parents may limit their thinking to the time when the children are with them);

- The concept probably would not work well in long-distance situations because it would be difficult for the children to move regularly between remote locations;

- It may prove impossible to assign responsibilities exclusively to one parent or the other, which might cause confusion and conflict;

- Children need to have one primary caregiver to have stability in their lives. This option may preclude this (others felt that the need for one primary caregiver would be addressed by retaining the word *custody* and defining it narrowly to mean only the children's place of residence); and

- The term has been used in Australia and the United Kingdom and has not created the desired win-win situation for both parents. Rather, mothers have continued to provide the bulk of primary care, conflict between parents has increased (a development some attribute to the change in the way the law is worded), and non-residential parents have used parental responsibility as a weapon against primary care parents.

Those against option 3 also said that, by retaining the word *custody*, the option perpetuates the problems related to that term discussed under option 1.

Some women's organizations said that the wording of options 3 and 4 was too vague and would lead to increased litigation, greater conflict between parents and possibly violence. Furthermore, they said that option 3 would allow an abusive or violent parent to lobby for more control over the children and would limit the decisionmaking power of the parent with whom the children primarily live.

Option 4
Replace the current legislative terminology: introduce the new term and concept of *parental responsibility.*

Those in favour of this option reiterated the positive aspects of the term advanced in connection with option 3. In addition, some people said that option 4 was preferable to option 3 because it removes all reference to and emphasis on custody. Other supporters of this option place more importance on specifying in every case exactly how parental responsibility is to be exercised, and see this as an incentive to the parties to reflect on the practical implications of the parental reorganization. It would also do more than the other options to recognize the fact that in most cases, the division of parental responsibilities is something other than 50-50.

Other arguments in favour of option 4 were that similar terminology is used with success in the Quebec Civil Code. In response to concerns about the use of the word *custody* in international agreements, it was suggested that the legislation include a mandatory requirement for orders to state which parent has custody for the purposes of the Hague Convention the Civil Aspects of International Child Abduction.

Those against option 4 reiterated their concerns about the term *parental responsibility*, as outlined under option 3. Some people were also concerned about the following:

- Option 4 might result in children being automatically placed with the mother, because custody is subsumed under the many other parental responsibilities to be discussed and allocated; and

- The complex agreements that would result from option 4 would cause difficulties for other individuals who have to read and understand them (for example, teachers, health care professionals and police officers).

Some respondents said that the individual responsibilities making up *parental responsibility* should be detailed in the law so they can be clearly allocated between parents. These responsibilities would include, among others, housing, adequate nutrition, schooling, homework, medical care, sports, religious activities, extracurricular activities, emotional support, financial security and spending money (allowance). Others said that a list could never address all of the parents' responsibilities and would, in any case, extend to several pages. Given that, they favoured defining *parental responsibility* generally, and letting parents and judges specify the responsibilities they felt were most relevant to the situation. Still others said that the degree to which responsibilities are specified should be tied to the degree of conflict between the parents, with high conflict cases having individual responsibilities set out most clearly.

Option 5

Replace the current legislative terminology: introduce the new term and concept of *shared parenting*.

Those in favour of replacing the current terminology with the term *shared parenting* (in which the sharing includes the usual residence of the child) said that this term implies that both parents are expected to meet parenting responsibilities and, therefore, removes the "win-lose" aspect of some of the other options.

Some people said that the term *shared parenting* presumes equal responsibility for parenting which they felt gives both parents ownership of the process and allows them to create with little conflict an arrangement for exercising their parenting responsibilities and planning for the future.

Other people did not feel that shared parenting presumes equal responsibility for parenting and that this was positive because it allows for flexibility when dealing with exceptional circumstances while still presuming that, in most circumstances, one parent will not have total control over the children.

Others said that it was a drawback that equal responsibility could not be presumed. These people wanted to include the word *equal* (as in *equal shared parenting* or *shared and equal parenting*) to emphasize that parenting responsibilities, decisionmaking and residence are to be shared 50-50. Several arguments were presented along these lines, including the following:

- A 50-50 split of parenting responsibilities would lower divorce rates and reduce children's vulnerability, which was felt to be higher in single-mother households, in particular when the mother begins a new relationship; and
- In today's society both women and men work and have similar earning power. However, children between birth and age four should not have to reside with both parents equally and should stay with their mothers.

Those in favour of option 5 also made the following points:

- The current rejection of fathers should lead to the introduction of the shared custody presumption inherent in option 5 as a measure of "affirmative discrimination" in their favour;
- This option would support the child's continued interaction with his or her extended family, including both parents (in fact, some felt there was a need to extend option 5 by entrenching the rights of grandparents, as recommended by the Special Joint Committee on Child Custody and Access);
- *Shared parenting* could serve as a starting point for mediation; and
- Option 5 recognizes the equality of parents after separation and is therefore in keeping with domestic and international human rights agreements.

Some people pointed out that, if option 5 were adopted, it would affect the determination of child support payments. These respondents felt that, should *shared parenting* become the norm, the 40-percent rule for determining child support should no longer be used. They advocated moving to a more holistic approach to child support, based on an evaluation of the financial needs of both parents and the children.

Those opposed to replacing the current terminology with the term *shared parenting* expressed the following opinions:

- The term does not reflect the best interests of children because it focuses on the parents, rather than the parents' responsibilities for children;

- This option is unrealistic as it assumes a preferred parenting situation that is not always realistic or desirable (respondents noted that a shared parenting arrangement does not exist in most intact households);
- It is not beneficial and, in some cases, not possible to share all aspects of parenting;
- To share parenting equally requires extensive interaction between the two parents, which may not always be possible or desirable;
- The term does not acknowledge situations in which the grandparents are the children's primary caregivers;
- The term does not acknowledge situations in which neither parent is fit or willing to care for the children; and
- The term is unclear and, therefore, may make divorce more litigious and time-consuming, which would place low-income people, who cannot afford a lengthy court process, at a disadvantage.

Some respondents also said that, because this option seems to presume a 50-50 split of parenting responsibilities and, therefore, of time with the children, it might harm child support arrangements (which are currently based on the proportion of time children spend with one parent or the other).

Some women's groups were particularly concerned about the effects of option 5 in a situation involving family violence, and raised the following points in that regard:

- If *shared parenting* (presumed to mean a 50-50 split of parenting responsibilities) is the default situation, it would place the onus on one parent to prove that this is not in the best interests of the children (for example, in violent situations or when the other parent is uninterested or uninvolved);
- The option does not include a mechanism through which parents could raise concerns in court about the unsuitability of one parent to carry out parenting responsibilities; and
- If one parent were to raise concerns about the suitability of the other, that parent would risk being labelled "unfriendly" according to subsection 16(10) of the *Divorce Act*, which can negatively affect access and his or her opportunities to contribute to further decisionmaking.

Alternative Wording

Respondents proposed a number of alternatives, including the following, which they felt were superior to the options offered in the consultation document:

- Replace *shared parenting* with *co-parenting*, which does not imply a 50-50 split of parenting responsibilities;
- Replace *access* with *parenting time*, which has fewer negative connotations;
- Split *custody* into two parts: *custody* and *additional custody* or *guardianship*. The term *access* would then only be used when one parent is deemed unfit to have custody, in situations of family violence, for example;
- Consider the phrase *parenting plan* or *parenting arrangement*, which incorporates the concepts of custody and access as well as parental responsibility, and have the added benefit of being forward-looking;
- Consider the phrase *responsibility for the child*, which focuses clearly on the interests of the children and removes parents from the discussion altogether; and
- Consider one of the following: scheme for shared parenting responsibilities; time with one's child; time shared with one's child; sharing of time and tasks; parents to share their parenting responsibilities as follows; and so on.

Some respondents from Manitoba reported that the law there uses the phrase *care and control*, which implies both physical and emotional responsibilities toward children. Physical responsibility may be shared, but emotional responsibility is always equal. Some respondents said that this could be considered for use in the *Divorce Act*; however, others said that it could lead to rivalry between parents, both of whom want the greater degree of control.

Other respondents supported an entirely new option: a consensual approach to custody and access decisionmaking. This option reflects their belief that the current court system is not an appropriate venue for resolving family disputes and that there is a need for a kinder approach to custody and access issues. A consensual approach would include the following:

- collaborative law practices, including roundtable conferences with families at which lawyers could provide advice based on their experience;
- professionals to help parents through crises with education and support;
- a holistic approach to custody and access, involving many types of professional assistance; and
- a focus on non-adversarial thinking when dealing with children and parents.

Summary of Predominant Themes on Terminology

Three themes arose during the consultations with regard to legislative terminology addressing the roles and responsibilities of parents.

Women's organizations are concerned with violence and the primary caregiver role.

The first theme was generally advanced by women's organizations, who expressed two primary concerns: the safety of women and children in situations of family violence and recognition in society of the woman's role as primary caregiver. Their concern about violence led these groups to support options for terminology that allow sole custody (that is, do not presume a 50-50 split of parenting responsibilities), which they said is necessary in situations of violence to protect the parent and children from the abuser. These groups' concern about recognizing women's role as primary caregiver led them to support options that give decisionmaking power to the primary caregiver. This is because, according to them, control over decisionmaking should be tied to the level of parenting effort made (i.e. to the level of responsibility parents are willing or made to assume).

Men's organizations want men to be acknowledged as equally capable parents.

The second theme was generally advanced by men's organizations, whose primary concern was that men be acknowledged as equally capable parents. This concern led them to support options that presume a 50-50 split of parenting responsibilities. In fact, in some cases they argued that the options presented in the consultation document did not go far enough to make explicit the equal sharing of parenting responsibilities. In response to concerns raised about violence, men's organizations advanced the belief that many allegations of violence are false and, therefore, should not unduly influence the choice of new terminology.

Reducing conflict and breakdown of agreements versus preserving clarity and integrity of case law.

The third theme was advanced by some lawyers, professionals involved in family law matters and some parents whose primary concern was that the current terminology encourages conflict and the breakdown of access agreements. They said that this has a particularly strong impact on the well-being of children and generally felt that a change in terminology may engender a change in philosophy and practice. This leads them to support options that include the term *parental responsibility* but not *custody* and *access*, producing a better outcome for children. In contrast, other lawyers were primarily concerned with preserving the clarity of the existing terminology and the integrity of existing case law. They were therefore opposed to moving away from current terminology.

Table 2: Factors Enabling Good Parenting After Separation or Divorce

	Factors
Parents' relationship	Communication Cooperation Maturity Flexibility Willingness to keep the peace Coming to an agreement on the distribution of roles and responsibilities Respecting agreements Separating personal issues from issues affecting the children's well-being Listening to the children Providing opportunities for the children to speak with professionals Promoting strong relationships between the children and extended family and friends Being a good role model for the children by taking responsibility and trying to rectify mistakes Gender analysis of parenting issues Acknowledging cultural differences in child-rearing practices Validating parenting abilities of women with disabilities Validating parenting abilities of gays and lesbians Acknowledging that mothers cannot be replaced by fathers' extended family or new partner Promoting children's access to both parents
Legislative support	Recognizing both parents as equally capable Recognizing that children need both parents Taking into account women's social and economic disadvantages Recognizing that the image of the father as an ideal nurturing parent is often inaccurate Providing flexibility to respond to situations of violence or of disinterest on the part of a parent Specifying the need for a parenting plan Clearly defining terminology Acknowledging pressing financial issues involved
Support services	Education for parents Education for lawyers, judges and police officers Counselling Alternative dispute resolution services Informal support from friends, family and new partners, among others

FAMILY VIOLENCE

The presence of family violence can make the issues and choices that separating or divorcing parents face even more complex. The impact on the well-being of children who are direct or indirect victims of family violence is likely to be more severe and more long-term than in situations of separation or divorce in which violence is not present.

What impact should family violence have on determining the roles and responsibilities of parents?

Canadians were asked to provide their views on what impact the presence of past or current family violence should have on determining the roles and responsibilities of parents at the time of separation or divorce. Options within the legal system to respond to situations of family violence may include specialized assistance or services provided to families and the victims of family violence, as well as special consideration of issues of family violence in family laws and the *Divorce Act*.

The views voiced on this topic reflected Canadians' strong concern for ensuring the safety of children in situations of family violence. It seems that most Canadians who took part in the consultations feel that situations of family violence need to be dealt with differently than other situations of separation or divorce. Many similar or complementary suggestions for improving the legislation and services were offered by respondents from the various provinces and territories and representing various interests. However, a number of diverging—and at times opposing—views became apparent concerning the basic foundation and set of values upon which such protection should be based.

Four key questions were asked to solicit views on what effect family violence should have on determining custody and access upon divorce or separation:

- What are the issues facing children in situations of family violence?;
- How well does the family law system promote the safety of children and others in situations involving family violence?;
- What messages would you like to see reflected in the terminology and legislation with respect to family violence?; and
- How could services in your community be improved?

A number of comments were also made with regard to the enforcement of restraining orders. These have not been addressed in the current report as they do not fall within the scope of the family law system.

Issues Facing Children

Issues facing children in situations of family violence were discussed in terms of the nature of the physical and emotional harm inflicted on children and the immediate and long-term effects. There seemed to be general agreement among respondents on this question.

Physical and Emotional Harm

Children facing situations of family violence are at risk of losing their physical and emotional safety and security.

All respondents felt that children facing situations of family violence are commonly at significant risk of losing their physical and emotional safety and security. The loss of physical safety may include a general neglect of the children and their basic physical needs (for example, hygiene and sleep) or direct physical abuse. Emotional and psychological harm may be inflicted in a range of ways. Some people pointed out that children are often "silent victims." While children may not show signs of physical abuse, they quickly perceive the tension and conflict between their parents, and may not know how to cope with the conflict. Many times, children in situations of family violence feel isolated and blame themselves for the situation. They may lose their ability to trust and often live in fear of the next crisis erupting or of losing one or both of their parents. Such emotions may be intensified by situations in which children are forced to choose between parents. Children's inability to predict behaviour in those they love and their immediate environment adds to their feeling of loss of security and lack of sense of belonging.

Impacts on Children

Exposure to family violence may affect children both immediately and in the long term.

Depending on the nature of the violent situation, exposure to family violence may affect children both immediately and in the long term. The exposure to violence, the sense of uncertainty and the volatility of the situation may result in a range of psychological and behavioural problems. It may affect children's ability to develop cognitive and social skills, and result in poor problem-solving abilities, inability to focus, loss of spontaneity, inability to follow rules and mood swings. Some children react to the harm inflicted upon them by, for example, acting out their anger, or developing eating disorders. Others, suppressing their emotions, turn inward and dissociate. Many children in situations of family violence develop a low sense of self-worth. Social stigma (being picked on at school or being unable to make friends) may exacerbate such feelings. Within the family, children may be deprived of their right and ability to engage in childhood activities because they are worrying about and taking care of siblings or the abused parent.

The effects on children of being exposed to family violence may linger for years, even into adolescence and adult life. Some people suggested that when children know violence as the norm they learn violent expression and behaviour. Children facing family violence may, later in life, become more susceptible to drug or alcohol abuse, develop depression or commit suicide. In the long term, the presence of family violence may also have negative effects on their career, sexual development and beliefs.

How Well Does the Family Law System Promote the Safety of Children and Others?

Most respondents said that the current legislative system does not adequately meet the needs of children in situations of family violence. However, the reasons for this perception vary. Critiques directed at the current legislative system included the following:

- Current family laws do not provide adequate or sufficiently immediate safety nets for victims of family violence;
- Legal barriers exist that prevent lower income groups from accessing adequate assistance;
- The current legislation makes it difficult to introduce evidence that brings the court's attention to reported and unreported violence within the family;
- The current system does not adequately recognize that both men and women in a relationship may commit violence;
- The "friendly parent" rule (subsection 16(10) of the *Divorce Act*) allows abusers to continue the abuse of a spouse by preventing them from taking action to protect themselves and their families. When parents being abused attempt to gain sole custody of the children with limited, supervised or no access they are viewed as "unfriendly";
- There appears to be a presumption in case law and the courts that joint custody is in the best interests of the children, but in fact it is not when there is family violence;
- In some provinces and territories, the courts disregard the problem of violence altogether, and particularly the fact that violent situations have consequences for the children; and
- The legal system is intimidating to Aboriginal people: fear of being labelled as "troublemakers" or of being "revictimized" by the courts discourages victims of abuse from reporting incidents of abuse or situations of family violence.

Some respondents took the opposite view. In their opinion, family violence is a very infrequent problem and, therefore, should not direct the entire *Divorce Act*. Rather, they said that family violence should be addressed outside the family law system.

Some other respondents felt that the *Divorce Act* is an adequate legal tool to enable the courts to deal with spousal or family violence, and in their view, it is the situation as a whole, including the history of spousal or family relations, that must be considered. They fear that addressing the special issue of spousal or family violence in the *Act* may push other problems into the background, giving the impression that such violence is the overriding issue. Several participants said that the law currently makes it possible to respond appropriately to violent situations, but that all practitioners, including judges, must be more sensitive to this reality and better educated about it.

Terminology and Legislation: Messages and Specific Issues

Respondents' suggestions for the overriding message that the legislation should reflect with regard to family violence fell into three areas: best interests of children; clear definition of violence; and burden of proof. These broad messages provided, to a great extent, the underlying rationale for the more specific issues that respondents said should be dealt with in the legislation.

Best Interests of Children

The purpose of the legislation should be to ensure that children have the opportunity for healthy development, free from emotional, physical and psychological harm.

A majority of respondents felt that the best interests of children should be the main message conveyed through the *Divorce Act* and family law. The purpose of the legislation should be to ensure that children have the opportunity for healthy development, free from emotional, physical and psychological harm. It was suggested that the best interests of children must be seen from a long-term perspective, and consider the children's future development. Some stressed that the law should explicitly recognize the harm inflicted upon children who are exposed to family violence. It must also clearly state that family violence and the neglect of children is unacceptable. As such, many people said that family violence should constitute a key determinant in custody and access issues. It was also expressed by some that situations of family violence should be dealt with first before all other types of cases.

Clear Definition of Violence

A clear, consistent and detailed definition of violence *is needed.*

Respondents stated repeatedly that, if family violence is to play a key role in determining issues of custody and access, a clear, consistent and detailed definition of *violence* is needed. Many perspectives on the definition and meaning were provided, as well as views on how the terminology should be incorporated into and used through the legislation.

While many respondents said that demonstrated physical violence and the continued threat of physical violence should definitely not be acceptable, they had diverging views on the definitions and potential roles of other forms of violence (such as emotional and psychological violence) in determining custody and access arrangements.

Some respondents said that a parent who abuses his or her spouse may still be a good parent to his or her children.

Some respondents said that there is little relationship between the role of a spouse and the role of a parent, so a parent who abuses his or her spouse may still be a good parent to his or her children, or at least be able to provide adequate parenting through access arrangements. Respondents supported a narrow definition of *violence* and felt that there should be a distinction among *violence*, *abuse* and *conflict*, as well as between domestic and *family violence*. Respondents argued that abuse and conflict differ from violence, and some said that they are less harmful than physical violence and may be addressed through preventative measures (such as education and support services).

Some respondents said that, while subtle forms of violence between parents or towards children are more difficult to define and assess, they should nonetheless be considered just as important.

Other respondents argued that spousal abuse should be considered when determining a parent's custody of and access to the children. These respondents said that all forms of abuse or violence are an abuse of power between parents or between parents and their children, and should, as such, be treated equally seriously. They also said that witnessing violence constitutes a direct form of violence. Therefore, legislation should address children who are *exposed* to violence, rather than children who *witness* violence, as this would better reflect the reality of family violence and the harm done to children. Some of these respondents also suggested that, while subtle forms of violence between parents or towards children are more difficult to define and assess than, for example, direct physical violence, they should nonetheless be considered just as important.

There was disagreement on whether violence should be considered in the context of past conduct. Some argued that the legislation should only consider chronic situations of violence, in particular, a parent's demonstrated pattern of violent behaviour (as opposed to an isolated occurrence of violence). Others argued for "zero tolerance" of violence with definite consequences for abusers. Other points raised with regard to this issue include the following:

- Proving a history of violence is difficult because many abused women never report incidents of abuse or seek medical attention;
- Attempting to prove violence may, in some cases, endanger women and children more;
- The law needs to recognize the potential for re-offence and for increasingly severe violence (including after separation); and
- Child custody and access situations may present opportunities for new forms of abuse (for example, using court hearings and access arrangements to stalk or harass the victim, or inflicting economic abuse), and this needs to be considered during decisionmaking.

Suggestions for the most effective way to incorporate family violence into the legislation included changing the *Criminal Code* so that it acknowledges family violence (as a criminal offence), and including family violence in the "best interests" test in the *Divorce Act*.

However, some respondents stressed the difficulty of incorporating an appropriate definition of violence into a statute.

Burden of Proof

Some people said that when allegations of abuse are made the onus should fall on the alleged perpetrator to prove his or her innocence. Others said that the accusing spouse should present proof of the violence inflicted.

Two opposing viewpoints are apparent on the issue of how to allocate the burden of proof when family violence or abusive behaviour is alleged. Some people said that when allegations of violence are made the onus should fall on the alleged perpetrator to prove his or her innocence. Others said that the accusing spouse should present proof of the violence inflicted.

Points raised by respondents in favour of the first perspective include the following:

- There is already a tremendous onus on victims to provide proof of abuse and false allegations are seldom made in the first place;
- The legislation should assume that an unsubstantiated allegation does not mean a false allegation;
- In accordance with the best interests of children, all allegations should be considered seriously; and
- A gender-based analysis of family violence is appropriate. This would explicitly recognize that victims of abuse are more often women than men and that women are inherently disadvantaged in terms of power and socio-economic status.

Points raised by those in favour of the second perspective include the following:

- The current legislative system is inherently biased against fathers, who are frequently assumed to be the perpetrators of violence;
- There is an ongoing problem of false allegations of violence resulting in innocent parents (often fathers) being denied access to their children;
- The basic principle should be that allegations need to be proven, not assumed;
- A gender-neutral approach to the legislation is appropriate; and
- There should be no legislated presumptions for resolving custody and access issues.

Respondents provided many specific suggestions about how the current legislation could be improved. These primarily concerned allegations of abuse, assessments of violence and the role of the courts.

Allegations of Violence

Most people agreed that allegations of violence need to be investigated thoroughly, and that improvements are needed in the legal system to maintain accurate records and information. Respondents suggested that the legal system must provide mechanisms to adequately deal with allegations of family violence. Suggestions for how to accomplish this reflect the division of perspective on burden of proof (as discussed above). Some people emphasized that false allegations should be considered a criminal offence and that strong penalties should be imposed for allegations that are proven false. These respondents argued that the alienation of one parent from his or her children as a result of false allegations constitutes a form of emotional child abuse. Other people stressed that, when allegations of violence are made, it should be possible for judges to immediately make interim arrangements for the protection of the children until the allegations have been proven true or false. These respondents added that, as it is often very difficult for victims to present proof of abuse, the *context* in which allegations are made needs to be considered in such investigations.

The legal system must provide mechanisms to adequately deal with allegations of family violence.

Assessments of Family Violence

Closely linked to the suggestions on addressing allegations of violence are suggestions for improving the approach to assessments of family situations. Some people expressed concern that, due to inadequate assessments of family situations during separation and divorce, cases of family violence are sometimes not identified. Suggestions made include the following:

Some people expressed concern that, due to inadequate assessments of family situations during separation or divorce, cases of family violence are sometimes not identified.

- Screening tools need to be developed and used to assess violence in the early stages of the legal process to determine the nature and seriousness of the violence and the degree of risk to the children;

- These assessments would then be used to determine the level of access granted to each parent;

- The unique circumstances of each situation of family violence need to be thoroughly considered in each assessment, which makes it difficult to set out a template for assessing violence;

- "Family profiling" should be introduced into the family law system, by which each family situation would be classified according to the seriousness of its situation (from "high profile" to "low profile"); and

- Issues pertaining to the victim's situation and both parents' ability to fulfil their parenting roles should also be considered.

Judges need more guidance on how to deal with issues of family violence when making decisions on custody and access.

Role of the Courts

Many respondents said that, in addition to a clear definition of *violence*, judges need more guidance on how to deal with issues of family violence when making decisions on custody and access. Many called for greater consistency in how court decisions are made. Suggestions put forth include the following:

- Develop guidelines on children's safety (although some people pointed out that this needs to be approached with caution as a certain amount of judicial discretion is necessary);
- In response to the general difficulty of proving abuse, develop indicators of violence (including emotional abuse);
- To acknowledge the negative effects of violence on the spouse, children and the wider community, allow a victim impact statement to be read in family court;
- Develop a detailed framework for considering all qualitative and quantitative factors of family violence;
- Let a panel of judges (or experts, such as child psychologists) determine custody and access issues;
- Consider criminal charges in the overall determination of the best interests of children;
- Coordinate efforts between family law and criminal law, so that information disclosed in criminal court is transferred to family court; and
- Require judges to verify whether conjugal violence is involved.

Some people said that, when considering the best interests of children, the role of courts should be minimized. Alternatives were suggested, including the following:

- When Native people are involved, traditional methods for dealing with family violence should be considered before turning to the courts and elders and traditional knowledge be recognized as an alternative to the courts; and
- Pre-trial conferences should be used to better manage conflict and possibly avoid having to go to court.

Other Determinants of Custody and Access in Situations of Family Violence

Respondents also made the following points regarding legislative responses to situations of family violence:

- The law should recognize that mediation is not a safe alternative when family violence is involved with separation or divorce. Mediation should not replace legal proceedings in cases of family violence;

- Offenders should be required to accept treatment or counselling before access rights are granted (others disagreed with this suggestion, suggesting instead that counselling be voluntary); and
- As long as access is supervised, according to some respondents, children generally benefit from maintaining contact with both parents. Others felt that access to children should generally be denied to abusive parents.

Perspectives on the Five Legislative Options

The consultation solicited views on the five options for legislative change in the area of family violence set out in the consultation document. As is presented below, most of the input received concerned options 3, 4 and 5.

Option 1
Make no change to the current law.

Most respondents called for some change in the legislation and therefore did not support option 1. However, a few people did indicate that they were in favour of making no changes to the current law. Their reasons were as follows:

- Strong legislative and procedural processes are already in place to address concerns of family violence. Violence is a factor that is currently carefully considered in court through the "best interests" test;
- Highlighting family violence could lead to increased false allegations of violence, which, in turn, could lead to inadequate consideration of other factors of significance to the best interests of children;
- Government involvement in resolving issues of family violence should be minimal; and
- It is more important to ensure affordable services (such as counselling and supervised access) than focus on making legislative changes.

Option 2
Include a general statement in the law that acknowledges that children who are victims of violence or who witness violence are negatively affected, and that family violence poses a serious safety concern for parents and children.

Many respondents favoured this option, most commonly in combination with one or several of the other options. Some felt that this option could not stand alone, as it fails to provide a framework to effect change.

Those who indicated a preference for option 2 alone gave the following reasons:

- Laws against violence already exist in Canada and so repetition in the *Divorce Act* would be confusing; therefore, it should be sufficient to include only a general statement acknowledging the harm that violence inflicts on children; and
- If the laws were changed so that making false allegations of abuse was easier, conflicts between parents would be significantly intensified, which would eventually be harmful to children.

Option 3
Make family violence a specific factor that must be considered when looking at children's best interests, and when making parenting decisions.

As described in the sections "Clear Definition of Violence" and "Role of the Courts," above, many people said that family violence should be made an explicit factor for determining custody and access issues. As with option 2, respondents generally preferred option 3 in combination with one or several other options.

Some people who indicated that option 3 should be the principal legislative change, said that violence must be considered immediately so that quick action to remedy the situation can be taken. Respondents said that this option might address existing frustration that spousal abuse history is not taken into account when arranging custody and access. Respondents also said that the courts must conduct proper assessments of the situation before determining custody and access arrangements.

Some people argued that making family violence a specific factor for judges to weigh at their discretion would not likely result in the consistency and predictability required to adequately respond to this issue. Others argued that highlighting family violence in the law might lead to an increase in "parental alienation syndrome" or false allegations of abuse.

Some respondents suggested combining options 2 and 3, stating that option 2 may be more appropriate for responding to sporadic, isolated incidents of abuse (family violence *may* be a consideration) while option 3 may be better applied in cases of ongoing physical violence (violence *must* be a consideration).

Option 4
Establish a rebuttable presumption of limited parental contact and a limited decisionmaking role for a parent who has committed family violence.

Many respondents indicated that this option should be the main legislative change. Others preferred this option in combination with one or several of the others.

Many people were in favour of this option, stating that children's safety should always override parents right to parent. Several qualifying factors were suggested, however, with regard to the appropriate implementation of this option, including the following:

- A rebuttal presumption against custody and for limited parental contact unless the parent can prove that such a limit is not in the children's best interests requires strong direction about the criteria and type of evidence by which courts can vary a custody and access order to prevent further abuse and harassment;
- The standard of proof to trigger the rebuttable presumption should be presentation of credible evidence, as opposed to, for example, proof beyond a reasonable doubt. This is based on the argument that victims of violence are prone to hide or deny their abuse;
- Trained family law court judges must rule on these cases, since they are deciding how much contact a parent might be granted. This should be dealt with case-by-case;
- Cases of restricted access, when the non-custodial parent receives counselling or other assistance, should be re-examined every few months; and
- A violent partner should not have access until there is clear evidence of a change in behaviour.

Those who argued against option 4 generally said the following:

- The wording is too vague and, as such, will make decisions on custody and access more complicated;
- The presumption of limited contact may encourage false allegations by parents wanting custody of their children;
- Perpetrators should not be granted access, but be subject to a rebuttal in due time; and
- It is not in children's best interests to be placed in the custody of a parent who has abused them or the other parent (this should be included as a statutory presumption).

Option 5
Restrict the impact of the "maximum contact" provision by moving the principle from section 16(10) of the *Divorce Act* into the section that deals with the "best interests of the child."

Some people were in favour of this option, in particular for situations in which the children are deemed not to be at risk. This argument is based on the assumption that children benefit from continued contact with both parents, including the abusive parent, as long as adequate supervision is ensured. Many people felt that, again, a timely assessment to determine the possible effects of violence would be required if this option were to be implemented.

Those who argued against option 5 suggested that this change would not be acknowledged in the courts. They also felt that this option fails to adequately ensure the safety of children and victims of abuse.

Mechanisms for Ensuring Implementation of Legislation

Implementation:
- *timeliness;*
- *accountability; and*
- *enforcement.*

Many respondents suggested that mechanisms for implementing legislative changes need to be put in place.

Timeliness

Family violence must be dealt with expediently. One suggestion was a "fast-track" judicial process for cases in which family violence is a concern.

Accountability

The legislation needs to ensure adequate follow-up and review processes for decisions made on custody and access when family violence is involved.

Enforcement

Some people said that stricter enforcement mechanisms must be put in place to ensure that decisions on custody and access made to protect victims of violence are adhered to. Suggestions include the following:

- Establish effective enforcement mechanisms to ensure victims' safety outside the courts;
- Improve communication between the police and social services; and
- Apply penalties for false allegations.

Improvements to Services

Improvements to services that respond to family violence were suggested on three levels:

- the general approach or set of values upon which service provision should be based;
- the structural or organizational provision of services at large;
- ideas for new services and for improving particular services;

Other respondents called for consideration of other measures such as seminars on conjugal violence or on children who have witnessed it, and for support and mentoring services for children who have been victims of, or witnesses to, such violence; and

Respondents stressed the importance of creating protective environments for children.

Overall values:
- *best interests of children (the priority);*
- *prevention;*
- *culturally appropriate;*
- *gender sensitive; and*
- *safe.*

General Approach

Respondents expressed views on the overall values that should direct service provision. These values, set out below, partly reflect respondents' views on the message legislation should communicate about family violence.

Best Interests of Children. Most respondents said that the best interests of children should be the guiding principle for improving service provision in response to situations of family violence. This would, among other things, mean an increased focus on services that provide direct support for children and their needs.

Preventive. Services need to take a more preventive approach than is currently the case, focusing on educational services and early intervention. Some people proposed a "wrap-around process" to help promote a healthy environment for a family. This approach would bring together family members, neighbours, relatives and service agencies to provide support for both abusers and victims and improve the family's safety, social and financial well-being.

Culturally Appropriate. Services must meet the needs of the diverse cultures and language groups in Canada, in particular in situations of family violence. The system should also feature a more "people-friendly" approach to the legal process, making it less intimidating to Native people.

Gender Sensitive. While most people argued for a gender-sensitive approach to service provision, definitions of the concept varied. Some felt that the current system is gender-biased against men, and that equality for men and women should be sought: they thought it was much more difficult for a father to obtain effective help than it was for a mother. Others argued for a more feminist approach to service provision, bringing greater attention to what was described as the societal bias against women.

Safe. Many people emphasized the importance of safety while using services, both for children and for spousal victims of abuse.

Structure and organization:
- *community-based;*
- *funding;*
- *coordination; and*
- *accessibility.*

Structural and Organizational Approach

Many of the suggestions made for improving services concerned the overall structure and organization of service provision, rather than the quality of specific services. The following improvements were suggested.

Community-Based Service Provision. Some felt that the local community should play a larger role in providing services than is currently the case. Schools, extended families and community centres were seen as having the potential to protect children from violence and provide them with positive reinforcement.

Adequate Funding. Some respondents strongly emphasized that, without sufficient funding and resources, legislative changes and attempts to improve service provision will fail. It was repeatedly stated that adequate resources are imperative to ensuring a proactive approach.

Coordination. Some felt that better coordination among service providers, including provincial and territorial government agencies, would make their response to situations of family violence significantly more effective. The point was made that mediators could also coordinate their findings with other health care and social service agencies for use in court decisions on custody and access.

Accessibility. A number of measures could be taken to make already available and useful services more accessible to families and individuals who would benefit from them. Examples of such measures include the following:

- greater consideration of mobility issues for custodial and non-custodial parents, in particular in provinces and territories where out-migration is high;
- better provision of child care and transportation services to make, for example, parenting courses more accessible;
- better information about available services;
- shorter waiting lists for psychological assessments and other services; and
- decreased or no assessment fees for service (fees particularly limit victims of violence from using services).

Specific Services and Improvements to Existing Services

Specific services:
- *education and training;*
- *counselling and support;*
- *legal aid;*
- *mediation;*
- *access services;*
- *qualified staff; and*
- *children's advocate.*

Respondents listed a number of services as important parts of the response to family violence. Respondents acknowledged that some of these services already exist, but felt the public must be more aware of them and have easier access to them. Others suggestions below are for new services. It was also mentioned that faster and safer mechanisms in cases of violence or conflict, including fast-track legal procedures should be considered.

Education and Training. More education for parents, children and teenagers about family violence was felt to be important, particularly as a preventive approach to service provision. Many people also suggested that those who come into contact with families on a day-to-day basis should be educated about family violence. The need for education of professionals in the legal system was also expressed. This education and training should include the following:

- consideration of the central issue of abuse of power;
- comprehensive training on issues of woman abuse; this is necessary for all service providers;
- acknowledgement that there are cases in which both parents instigate domestic violence; and
- anti-oppression and anti-racism training.

Counselling and Support. Counselling and support programs were considered important services. However, there was disagreement about whether such counselling should be mandatory or voluntary. Points made with regard to counselling and support include these:

- There is a need for increased counselling for teenagers;
- Counselling for children should be mandatory, since professionals who may come into contact with children (for example, doctors or teachers) have insufficient knowledge of how family violence affects children;
- Programs for abusive persons should be made widely available and should be ongoing;
- There should be support and services for abused fathers, since this support is currently lacking; and
- First Nations families must be encouraged to participate in victims' rights and support programs.

Legal Aid. Some respondents stated that the adequate provision of legal aid is vital to the response to situations of family violence. They said that legal aid should be made available in all cases of domestic violence and contested custody and access. Some respondents also recommended that the parameters for qualifying for legal aid be expanded.

Mediation. Some respondents said that mediation is often not a safe dispute resolution alternative in situations of high conflict and family violence. Respondents attributed this to the power imbalance between the parents and to the victim's fear of speaking out. Other people said, however, that safe alternative dispute resolution mechanisms are needed, in combination with parent counselling and parent education programs.

Access Services. Supervised access centres provide a very important service to children and parents in situations of family violence. Respondents made a number of suggestions about access services:

- Create more places for access and exchange;
- Develop clearer agreements on pick-up and drop-off to increase the safety of family members;
- Add therapeutic education components to supervised access programs to improve safety;

- Look at "family houses" as an option; these would provide supervised access services and serve as a point of contact for a range of other community services; and
- Review the California legislation on supervised access and safety standards to inform changes to Canadian legislation in this area.

Qualified Staff. Some respondents expressed concern that support service staff are at times not adequately trained in family violence issues. It was seen as particularly important that supervised access personnel receive relevant and sufficient education in this regard. It was also pointed out that psychologists, when conducting assessments, do not always abide by the same standards or rules. Similar qualifications and standards should apply for all, and assessments should be conducted by non-partisan professionals.

Children's Advocate. Some people suggested that meeting the best interests of children requires a greater emphasis on support services that ensure children's views and stories are listened to and seriously considered. Children need professionals—social workers, psychologists and lawyers—to adequately support them in situations of family violence. Some respondents said that, through the assistance of psychological services, judges may determine the children's perspective and address any needs they have for counselling or treatment. Another suggestion was made that pediatricians should be heard in cases involving younger children. Teachers may also have a role to play as observers of changes in their students' behaviour.

Additional Services. In addition to existing services, respondents suggested that the following services may be useful in addressing situations of family violence:

- addiction treatment centres;
- settlement conferences to facilitate decisionmaking outside the court system;
- community-based family conflict resolution and counselling services;
- reintroduction centres to help children and parents after long-term separation;
- shelters and safe places for men;
- the importance of creating protected places for children was mentioned; and
- other participants said that specialized seminars on spousal violence and children who witness spousal violence, and services to support and accompany children who are victims or witnesses of violence, should be included among the measures to consider.

HIGH CONFLICT RELATIONSHIPS

Almost all couples experience some level of conflict during separation and divorce. The degree of interpersonal and legal conflict varies widely and conflict levels can change depending on the issues the parents are dealing with.

High conflict parents may have serious underlying problems, such as emotional, mental-health or substance abuse problems. High conflict cases consume a large amount of court time and services. The level and intensity of parental conflict is also a very important factor in children's adjustment after separation or divorce. Parental conflict and lack of cooperation also have a negative effect on children's adjustment after separation or divorce.

It has been suggested that improvements to the family law system are required to protect children from the negative effects of high levels of conflict between their parents. Specific approaches that have been tried include parent education programs, supervised access and exchange centres, and intensive court management of high conflict cases.

Three key questions were asked regarding high conflict relationships:

- In your experience, how well does the family law system promote the best interests of children in situations involving high conflict relationships?;
- What are the advantages and disadvantages of the various approaches governments could take to promote child-centred decisionmaking in high conflict cases?; and
- How could services be made more helpful to parents who are trying to reach agreement on how they will care for their children after divorce?

Promoting the Best Interests of Children

Parents return to court over and again, drawing both financial and emotional resources away from their children.

Many respondents said that the current family law system does not adequately promote the best interests of children when parents are in a high conflict relationship. Some said that the inadequacy of the law is evident in the fact that parents return to court over and again, drawing both financial and emotional resources away from the children. It was also suggested that separating or divorcing parents in high conflict situations often place their own needs above those of the children, as when parents use children as pawns.

Other respondents said that there should be no special provision in the *Divorce Act* to deal with high conflict cases. They pointed out the danger that specifying remedies for particular circumstances (i.e. high conflict) would infer that these remedies are unavailable in other circumstances. While suggesting that some priority be given to high conflict cases, in terms of ensuring the availability of services, respondents cautioned that the inclusion of special provisions for high conflict cases may also provide the opportunity for parties to argue about the character of their relationship.

Legislative Approaches

Many respondents said that, first and foremost, the law should focus on the best interests of children when addressing high conflict situations. They also discussed the definition of *high conflict* and the impact of high conflict situations on custody and access arrangements.

Defining High Conflict

Some respondents had strong concerns about the term *high conflict* and, in particular, the kinds of criteria that may be used to discern high conflict cases from those involving violence. These respondents said that this distinction suggests that a certain level of abuse is acceptable, which is incorrect. They said the following:

Distinguishing between high conflict and violence suggests that a certain level of abuse is acceptable.

- The common relationship between woman abuse and high conflict cases warrants careful analysis of each case, including consideration of the social context in which the conflict or abuse occurs;
- Incidents of abuse are commonly mislabelled as "mutual abuse" or "mutual battering";
- Any assessment of incidents of high conflict or violence must consider the prognosis for reoccurrence and identify who is the main aggressor;
- Since there is no difference between high conflict and violent relationships, it is important not to make specific legal provisions for violent situations different than for those that are considered high conflict; and
- It is very difficult to draft legislation that distinguishes between high and low conflict, and a legal definition may lead to more conflict over what the terms mean.

Other respondents took a different approach to defining high conflict situations during separation or divorce. They said the following:

- The law must recognize the heightened stress and humiliation that parents experience when going through divorce or separation;
- Incidents of high conflict and abuse in such situations should not be determinants of access to children; and
- Bias against fathers in the courts must be addressed and amended.

The definition of high conflict *needs to encompass other factors, for example, abuse, alcoholism, drug use or mental illness.*

Still others suggested that the definition of *high conflict* needs to encompass other factors, for example, abuse, alcoholism, drug use or mental illness.

Impact on Custody and Access

Those respondents who equate high conflict with violence said the following:

- High conflict relationships should result in limited or no access rights for the conflicting parent; and
- A child-centred approach precludes joint custody in high conflict relationships: contact with both parents is often not beneficial, since violent and controlling parents are not, by definition, fit parents. Joint custody may therefore be damaging to children in situations of high conflict.

Two perspectives: high conflict equals violence versus high conflict does not equate inability to parent well.

Those respondents who said that high conflict is a natural by-product of divorce or that interparental conflict does not equate inability to parent well also said the following:

- Parental conflict should not preclude co-parenting;
- It is wrong to assume that parents who cannot get along should automatically not be allowed joint custody;
- Shared parenting can help reduce parental conflict by removing excessive power from one of the parents;
- The law presumes equal-time shared parenting; and
- There should be no legislated rules for determining the parameters of parenting in joint custody arrangements.

Legislative Options

The respondents' views on the overall legislative approach to high conflict relationships were reflected in their reactions to the five legislative options. It should be noted that arguments presented against option 1 were echoed in arguments in favour of option 2, and vice-versa. The same applies for arguments in favour of and against options 3 and 4. To avoid repetition, only the perspectives expressed in support of each option are presented.

Option 1

The law should include no specific provision. Changes to address high conflict cases could have a negative effect on the majority of parents who co-operate. The focus should instead be on making changes to support parents who can reach cooperative solutions.

Some respondents adhering to this option said that it opens up the possibility for a presumption of "shared parenting." With this option, there may be greater scope for allowing parents, through joint custody, to parent the way they feel is appropriate. Others supported option 1 because they felt it is more important to focus on developing specific provisions for situations of family violence than for high conflict situations.

Other points raised in favour of option 1 were as follows:

- There is no need to create additional intrusive laws;
- Any agreement between parents is better than a court decision;
- The current legislation already empowers judges to make specific detailed orders or to specify dispute resolution mechanisms (as proposed in options 2 and 3); and
- It should be (and currently is) up to the judge's discretion, guided by other professionals, to decide whether a particular order is appropriate in an individual case.

Option 2

The law should say that, when judges are concerned about ongoing high conflict parenting disputes, they should be able to set out in the court order very specific and detailed parenting arrangements to provide a regular routine and autonomy for each parent's time with the children.

Some respondents preferred this option, arguing that ordering specific and detailed parenting arrangements early in the process would lessen the degree of conflict between parents and serve the children's best interests. They said the following:

- Strict rules that are immediately enforced act to de-escalate the conflict as parents begin to develop a routine and pattern;
- Parents who have been "successful" in a highly managed parenting arrangement often work more collaboratively later;
- Detailed court orders would help reduce the opportunities for misinterpretation and abuse of such orders;
- Very specific orders would improve the protection of children and the non-abusive parent; and
- Parents with power and control issues cannot engage in successful joint parenting decisionmaking.

Some of those in favour of option 2 specified factors or conditions that should be considered in determining the court-ordered parenting arrangements. Suggestions included the following:

- An assessment of the high conflict situation must include how the parents function in the rest of their lives. It is important to attend to any mental or behavioural disorders that may affect the parents' parenting ability and to be aware that such things are common in high conflict relationships;
- Lawyers should notify judges of any criminal court orders so that family court orders may conform to these;
- There should be communication between the civil and criminal courts, for example, about restraining orders and assault charges;
- When there are concerns about high conflict, the specific access and custody arrangements should not require any cooperation or joint decisionmaking, nor require contact between the parents;
- A time schedule should be set for the court to report on how the arrangement is progressing and whether any changes should be made;
- Parents who circumvent the court order should face immediate and consistent consequences;
- The police should have a stronger mandate to enforce court orders;
- A court-paid mediator should monitor the situation after the order has been made and also help the parents adapt to the arrangements; and
- When developing the court order, the practical realities of access (including travel time and shift work) must be considered.

Option 3
The law should say that, when judges are concerned about ongoing high conflict parenting disputes, they should be able to specify in the court order a dispute resolution mechanism that the parents are to use. Judges should order compulsory therapeutic mediation for the parents or should impose co-parenting seminars.

Those respondents in favour of this option said that anyone with custody or access rights should have to use programs or mechanisms to sort out issues of conflict and to recognize the needs of their children. Many respondents stressed that this option should be accompanied by some sort of incentive for parents to cooperate. It was also pointed out that dispute resolution mechanisms must be accessible and affordable.

Option 4
The law should discourage arrangements requiring cooperation and joint decisionmaking when there are concerns about ongoing high conflict parenting disputes. The law could say that these arrangements would not be in children's best interests.

Those respondents in favour of option 4 (who often also favoured using the term *parental responsibility* to describe the custody and access arrangement) said that forced conflict resolution mechanisms in situations of high conflict are likely to be both unsafe and unproductive. They said the following:

- When orders are issued in high conflict disputes that require parental cooperation they only serve to exacerbate the conflict;
- Participating in conflict resolution processes may be unsafe in situations of high conflict, given the power dynamics between aggressive and non-aggressive parents;
- Canadian statutes should, in fact, restrict the use of mediation in cases that include violence against women;
- Since real cooperation is not possible in high conflict situations, it is up to the courts to settle the disputes; and
- Litigation should be a preferred option to mediation.

However, some respondents also said that parents who are willing to cooperate and work the issues out by themselves (outside the court system) should be supported. In these cases, the courts should not have to lay out provisions or settlements for parents.

Option 5
The law should include a combination of the above approaches.

Many respondents preferred a combination of the options, most commonly options 2 and 3 or 2 and 4. The arguments in favour of these combinations were generally similar to those presented for each individual option above. Some additional points are noted below.

Preference for a combination of options 2 and 3 was based on the notion that highly detailed court orders for parenting arrangements paired with ordered dispute resolution through a designated judge (or another *binding* decisionmaking person) would be the most efficient. Other points raised included the following:

- Enforcement mechanisms are important, including legislated consequences for breaching orders;
- There should be consequences for non-compliance with mandatory cooperative measures;
- Both court-ordered arrangements and dispute resolution processes must consider differences in socio-cultural beliefs when assigning parental responsibilities; and

- While this combination of options is generally good, it should not be applied for cases with a history of violence or complete non-cooperation.

Preference for a combination of options 2 and 4 was based on the notion that parents in a high conflict situation do not easily agree. Some respondents indicated that the legislation must specify that safety of children and parents is paramount. Making high conflict parents (and, depending on respondents' definition of *high conflict*, sometimes violent parents) pursue joint problem solving and conflict resolution would not ensure safety.

Improvements to Services

Most of the services listed in the consultation document were generally considered useful in situations of high conflict.

Some concerns were raised about service provision in general, such as the following:

- The accessibility of services needs to improve in rural areas;
- None of the programs or services listed deal specifically with the abuse of fathers and children; this, again, reflects an overall bias in favour of women;
- There should be a limit to the fees paid to family law professionals, as these professionals often encourage conflict;
- Unless special facilities exist to identify and divert families into counselling and education programs about children, early judicial intervention should be used to avoid protracted litigation;
- Such situations demand non-judicial remedies;
- Parents, lawyers and judges should decide what services are appropriate in any given case; and
- The full range of services should be available to separating and divorcing parents and their children regardless of whether they have been engaged in the court process.

The written submissions included comments on particular services, as follows.

Useful services in high conflict situations:
- *education;*
- *mediation;*
- *legal aid; and*
- *supervised access centres.*

Education

- Parent education was seen to reduce high conflict by setting expectations for parents. Parent education should cover issues of child development and the effects of hostility on children;

- Education for children should be made widely available, as a way to help them understand the process of family restructuring. Children should be taught about conflict in relationships to prepare them for future relationships and prevent conflict. Some respondents felt that, while education for children was generally positive, there should be caution against children becoming dependent on education (as well as support groups); and

- The book *Positive Parenting From Two Homes* was recommended as a resource for parental education.

Mediation

- Some people felt mediation was a necessary service. However, they recognized that it may not be appropriate when the parents are unwilling to seek cooperative solutions. Other respondents suggest mandatory mediation.

Legal Aid

- Some people stressed that access to legal aid for parents in high conflict situations is very important. Some suggested that both parties should be entitled to legal aid because, if only one of the parties has access to legal aid, unfair court orders might result; and

- Other people said that legal aid is not a very useful service. Some felt that legal aid lawyers are not qualified to "restructure" families. Others suggested that legal aid is currently not sufficiently funded, which leaves clients to either fend for themselves or to reapply for aid.

Supervised Access Services

- Many respondents indicated the importance of supervised access facilities in reducing conflict between parents. Some pointed out that access exchange centres need to be independent of the parents; others said that supervised access should be free; and

- Therapeutic access centres were also considered important. Programs should focus on parenting skills and anger management.

CHILDREN'S PERSPECTIVES

Children are directly affected by the decisions parents and judges make during separation and divorce. Understanding the children's perspectives on the way parents propose to care for them is essential if the children's best interests are to remain the central focus of decisionmaking. In Canada, the family law system currently provides a number of ways children's perspectives may be heard, including having judges speak directly to the children, custody and access assessments, and through lawyers or others representing children's interests.

Participants discussed the following questions:

- Does the current family law system adequately take children's perspectives into account?;
- Should children's perspectives be better incorporated during discussions on custody and access?; and
- How can children's perspectives be better incorporated into discussions on custody and access (during mediation, negotiation or the court process)?

Taking Children's Perspectives into Account

The current family law system does enable children's perspectives to be taken into account, but the law is applied with varying degrees of adequacy.

Some respondents said that the current family law system does theoretically enable children's perspectives to be taken into account, but that, in practice, the law is applied with varying degrees of adequacy. They attributed this unevenness to several sources:

- judges, who make their own decisions about whether they will hear from children;
- the children's ages (some children are too young to be consulted, while older children can be difficult to talk and relate to); and
- the lack of training for those whose task it is to elicit children's opinions.

Other respondents said that, while children are consulted, the process can take a long time and it is very difficult for children to spend weeks or months waiting to have their say.

The experiences of young people as expressed in the youth sessions reinforce the belief that children's perspectives are taken into account to varying degrees. Most of the young people were not asked their opinion during their parents' separation, mostly because they were considered too young. Others reported that they had spoken to the judge or to lawyers about their preferences, how their parents treated them, and even with which parent they wanted to live.

Should Children's Perspectives be Better Incorporated?

Some respondents were in favour of children's perspectives being better incorporated during discussions on custody and access. However, they qualified their support with the following statements:

- Children's opinions should not be the only basis for decisionmaking;

- Children should not be forced to choose between one parent and the other;
- Judges and lawyers should be more critical when considering children's opinions;
- Only children over the age of 12 should be consulted;
- Children should be consulted only when there are ongoing concerns about access; and
- Children's perspectives should be included only when they are distinct from those of their parents.

Other respondents brought up the fact that, in traditional Inuit culture, the children's opinions on where they would like to live after the separation would be solicited and respected.

Still others mentioned that the child counsel model being used in New Zealand and Australia demonstrates the benefits of including children in decisionmaking, and could be a model for Canada to consider.

Young people want to be informed about the situation and allowed to give their opinion but not embroiled in conflicts between their parents.

Some young people agreed that they should be consulted during the separation process and that this would have a positive effect on the resulting custody arrangement. However, they emphasized that, although they wanted to be informed about the situation and allowed to give their opinion, they do not want to be embroiled in conflicts between their parents, or to have to select the custodial parent themselves.

Other young people were happy that they had not been involved in discussions on custody and access during their parents' separation and said that this was appropriate. The reasons they gave for not wanting to be involved included the following:

- It is the parents' decision to make, not the children's;
- Children don't understand the situation well enough to make a decision;
- Taking part in decisionmaking would have emotional consequences (children would feel they had rejected one parent and would worry that they had disappointed the parent they chose not to live with); and
- Children are accustomed to the existing custody arrangement and would not want to change it, even when they were older than when the original decision was made.

Some participants in the youth workshops also pointed out that even if they were asked their opinion, it might not be taken into account. They said that if parents are not going to take their children's opinions into account, they would be better off not involving the children.

How to Incorporate Children's Perspectives

Need to safeguard the children's well-being while they are participating in the decision-making process.

Some respondents emphasized the need to safeguard children's well-being while they are participating in the decisionmaking process, and gave the following examples:

- Children should not be forced to contribute to the discussion, as this would place too much pressure on them;
- The legal process should protect children from repercussions from parents or parents' lawyers;
- When children speak with a judge in a separate hearing (away from their parents), the hearing should be recorded;
- If children are asked to participate in mediation, they should only have to do so when they are comfortable with the mediator and their parents are not in the room;
- Those eliciting the children's perspectives should be properly informed and trained in the correct way to do so;
- Children should be directly told of the resulting decisions (for example, by the judge if the case has gone to court). That way they will understand what happened and why a particular decision was made;
- Children's opinions should be solicited early in the process, so that children are subjected to the least possible pressure from either parent;
- Similarly, an expeditious approach is best, given that the waiting is very hard for a child who is told that he or she will have to give an opinion at a court hearing that is weeks or months off;
- Children should only be heard during mediation, and should be kept out of court; and
- Judges and lawyers are not qualified to deal with children, so assessments by trained professionals are needed. Some youth participants agreed with this, indicating that they would prefer to speak with psychologists and social workers rather than lawyers or judges.

With regard to children having their own lawyers, some respondents raised concerns based on their experiences. In some cases, they felt that children's lawyers became *de facto* second lawyers for mothers. The respondents suggested that, if children are to be allowed their own lawyers during the divorce process, these lawyers should have a well-defined role and be properly trained and equipped to receive instructions from their clients and determine their best interests. These respondents also felt that ethical conduct codes were needed for children's lawyers that would address, among other things, the need for neutrality with respect to the children's parents.

Other respondents said that children should be able to have their own lawyers when they are able to instruct them and when the assessor who has been assigned to them is unable to adequately represent their needs.

Factors affecting the level of children's involvement:

- *age;*
- *support;*
- *information;*
- *relationship with parents;*
- *emotional well-being;*
- *special needs;*
- *parents' cultural background; and*
- *parents' relationship.*

During the youth workshops, participants came up with several factors that they felt should affect the level of children's involvement in decisionmaking about custody and access:

- age: children who are too young or immature would not be able to participate meaningfully in decisionmaking; however, participants did not agree on the age at which children should be more involved (their suggestions ranged from 13 or 14 years old to older than 16);
- support: children who are unable to decide for themselves (for example, because they are too young) should receive support from a psychologist or other professional so that they can be involved;
- information: children need information about the situation and the possible repercussions of their decisions if they are to participate;
- relationship with parents: if the relationship is strained or minimal (for example, when the children have lived with only one parent for a long time), it would affect the children's ability to make unbiased decisions. Some participants mentioned that they would have to see whether their other parent is worth getting to know and cares about them; and
- emotional well-being: they want to protect their own emotional well-being during the process and to be fair to themselves.

Other factors to be taken into account in deciding whether and how children's perspectives should be incorporated include the following:

- whether the children have special needs;
- whether the children's parents are physically abusive;
- whether the parents have very different cultural backgrounds or values; and
- whether the parents have a high conflict relationship.

Respondents made other comments about including children's perspectives, such as the following:

- The only way for children's perspectives to be heard clearly is to remove the process of divorce and separation from the legal system entirely, doing away with the concept of winners and losers; community service providers could then handle the situation;
- Counsellors and psychologists should not play a role in interpreting children's needs and perspectives because they make a living selling their opinions;
- Enacting the recommendations of the Special Joint Committee on Child Custody and Access would resolve the question of incorporating children's perspectives; and
- Any child who does not want a relationship with one of his or her parents is a victim of parental alienation syndrome and should be removed from the parent who caused that syndrome.

MEETING ACCESS RESPONSIBILITIES

Many individuals raised concerns about meeting access responsibilities. Problems often arise when parents cannot agree on an access arrangement or when they fail to abide by the terms of their written agreement or court order. There have been many reasons cited for these problems, including a misunderstanding about what the agreement or order requires parents to do or a reluctance to accept the terms of the agreement or court orders from the outset.

Problems often arise when parents cannot agree on an access arrangement or when they fail to abide by the terms of their written agreement or court order.

Currently, there are several ways to deal with non-access and access denial. Some remedies include supervised access, mediation, court-ordered assessment reports, scheduled time to make up for lost access time, reimbursement of expenses, variation of custody orders, and fines or imprisonment to respond to deliberate, unreasonable non-compliance.

The topic of meeting access responsibilities was addressed through the following questions:

- How well does the family law system promote meeting access responsibilities?;
- How aware are you of existing services in your community? How could these services be improved?; and
- How can the family law system encourage meeting access responsibilities?

Encouraging parents to meet access responsibilities:
- *parenting plan;*
- *education; and*
- *counselling.*

Encouraging Parents to Meet Access Responsibilities

Respondents provided suggestions for measures that should be considered to encourage parents to meet access responsibilities.

Parenting Plan

In the opinion of some respondents, the family law system must encourage the development of workable parenting plans. A parenting plan that is accepted by both parents would encourage them to fulfil the agreed-upon access responsibilities. Both parents should agree to the plan and feel ownership. The courts must emphasize that parenting plans are flexible and are an agreement between the two parents that can change with their consent. The court system should become more user friendly so that if changes to the parenting plan were necessary parents could work together to revise it.

Education

Further education should be provided to parents when they are having difficulty meeting access responsibilities. Resources should include the following:

- divorce management courses that would emphasize the parenting plan that was created, build on effective communication skills, and reduce conflict in the relationship;
- anger management courses for individuals having difficulty accepting the situation and creating hostility in the children's environment;
- education and counselling for children;
- a "parenting after divorce" course;
- information and training that enhance the father's role and encourage him to care for his children from birth;
- information and training that enhance and distinguish between our respective roles in life as parents; and
- information and training that acknowledge that when a couple separates, the former parents have issues to resolve and, as parents, must seek areas of agreement so as to shield the children from the effects of their conflict.

Counselling

It was also suggested that counselling involving both parents could play an important role in ensuring that the children can spend time with both parents.

Counselling would help parents remain focused on the children's best interests and comply with the access and custodial arrangements designed to meet the children's needs. Counselling could also help parents recognize the value of cooperating with the other parent, improve communication, and learn to respect each other.

Promoting Meeting Access Responsibilities Through the Law

Many respondents said that the family law system is not effective in ensuring that parents meet their access responsibilities. This applies to situations when one parent denies access to the other parent, as well as when the non-custodial parent does not fulfil his or her access responsibilities.

Non-exercise of access: forcing an uninterested parent to have access to the children would be unproductive and possibly even dangerous.

Many respondents said that non-exercise of access was just as detrimental to children as access denial. However, most respondents also felt that forcing an uninterested parent to have access to the children would be unproductive and possibly even dangerous.

Denial of access: compliance orders are easily ignored since follow-up action rarely occurs.

With regard to denial of access, some people said that while remedies may exist, few are effective or aggressively enforced. Specifically, many respondents indicated that court orders are easily ignored since follow-up action rarely occurs, allowing the parent denying access to continue to do so. Other respondents suggested that denial of access was not always a deliberate act, but rather was the result of circumstances caused by a family law system that was inaccessible and lacked flexibility, or was due to the children themselves (because of illness, for example, or their desire to take part in an activity).

Some respondents said that denial of access should trigger a screening for violence, as fear (either on the part of the custodial parent or the children) might be at the root of the problem.

Participants cited three aspects of the family law system that require attention, regardless of the motivation for access denial: enforcement, alternatives to the courts and supervised access centres.

Effective Enforcement

Some respondents suggested that, when the custodial parent denies access, the only recourse is the police. It was recognized that the police are reluctant to become involved in access disputes, unless there is evidence of risk or harm to the children or one of the parents. The only option that remains is for the non-custodial parent to re-enter the legal system and attempt to seek relief from the courts. Respondents described this as time-consuming, expensive and generally not an appropriate way to meet the needs of the children and the parent, particularly when, at best, the custodial parent is warned to comply with the access order. In the view of some respondents, no meaningful action is currently available to parents to address the problem. It was however suggested that in such circumstances, the judge in an access case should monitor it from start to finish, and should be directly accessible, if access to a child is denied, upon simple application by the party denied access. The judge would thus exercise supervision over follow-up measures and would monitor parents' attitudes.

There must be a clear and firm commitment to enforcement by the family law system.

Some respondents argued that access to both parents is the children's right and that the custodial parent may not deny this right. Respondents suggested that there must be a clear and firm commitment to enforcement by the family law system, and that this could be demonstrated in several ways:

- imposing fines on the offending custodial parent;
- implementing a "broken promise clause";
- awarding mandatory make-up time, along with consideration of additional time between the non-custodial parent and the children; and
- giving serious consideration to imprisoning the custodial parent, when he or she does not pay the fines, does not provide make-up time, continues to deny access, or some or all of the above.

Other respondents suggested that imposing fines may be counterproductive, as it adversely affects the funds available to meet the needs of the children. Respondents also said that imprisoning a parent is a traumatic experience for children and, as such, is not in their best interests.

Denial of access could often be avoided if accessible and affordable alternatives to the courts were available.

Alternatives to the Courts

Some respondents said that denial of access could often be avoided if accessible and affordable alternatives to the courts were available. They also said the following:

- Access orders can very quickly become out of date as a result of new interests, new relationships and new demands on the children's time. Children may become involved in activities, such as athletics or the arts, which require considerable time and effort. As a result of this change in lifestyle, the custodial parent may deny or reduce access to the other parent because the children have limited time available, particularly when the parent is also reluctant to go to court to amend the access order; and
- A lack of financial resources with which to effectively engage the court system and amend an access order can also result in the custodial parent deciding it is easier to deny access.

Respondents suggested that governments need to establish and actively promote alternatives to the courts, such as enforcement mediation programs or community panels of family experts who could assess and resolve access disputes in a fair, consistent and timely manner.

Others suggested recourse to a new impartial resource—a "case manager"—who could monitor the situation and provide a link between the family and the judicial system.

Where there is a lack of supervised access facilities, non-custodial parents often find themselves with no way to provide safe and sustainable access.

Supervised Access Centres

Some respondents said that the limited availability of suitable facilities for supervised access is also a concern. In some cases, the non-custodial parent can only have access when supervised, most often at a designated supervised access centre. However, safe and suitable supervised access centres are not available in many communities, especially in rural, remote and northern areas. When there is a lack of facilities, non-custodial parents often find themselves with no way to provide safe and sustainable access.

Services to Support Meeting Access Responsibilities

Many respondents said the services were crucial to help ensure parents meet their access requirements.

Governments and community agencies should do a better job of building awareness of the family services currently available.

Some respondents said that governments and community agencies should do a better job of building awareness of their family services:

- Many people are unaware or unsure of the services provided by the province, territory or community. Even practitioners are poorly informed about the services available;
- In rural, remote and northern areas, access support services are largely unavailable;
- Services needed to be advertised and promoted within each community;
- A service database and/or pamphlet should be developed describing the community and government services;
- Kiosks could be set up in high-traffic locations in communities, such as libraries, social service centres, medical centres and shopping locations;
- Information should be provided in language that is easy to understand and used within the area, along with clear directions for how to contact the service agency; and
- The Internet was suggested as an appropriate means for distributing information; however, some respondents felt that it was not available to the majority and that alternatives, such as pamphlets and posters, were better options. Television programs and government advertising campaigns were also suggested.

Services in support of access:

- *initial screening;*
- *mediation;*
- *mandatory review of parenting arrangements;*
- *supervised access and resource centres;*
- *enforcement officers; and*
- *child advocates.*

In addition to discussing the services already offered by governments and communities, participants suggested ways to improve current services and provide new services that would help parents meet their access responsibilities.

Initial Screening Process

It was suggested that having an initial screening or family profile done at the outset of divorce could help parents trying to meet their access responsibilities by determining the most appropriate services for them. The screening would also help identify inappropriate services such as mediation for high conflict situations.

Mediation

Many respondents said that ongoing access mediation services would help parents remain focused on the best interests of their children, as follows:

- Mandatory mediation might reinforce the importance of following agreed-upon access orders;
- A mediator would be helpful in situations that could be resolved outside the legal system. Mediators should also be attached to supervised access centres;
- The Special Masters program in California should be assessed for its potential application in Canada. A "special master" is someone who can deal with family issues but practises outside the court;
- The legal system would be reserved for high conflict relationships when a mediator was unsuccessful or would not be a reasonable alternative; and
- The mediator could help parents create workable custody orders to reflect changing circumstances.

Mandatory Review of Parenting Arrangements

When parenting arrangements are created at the onset of separation they may not always be workable or successful in all situations. Some people suggested that there should be a mandatory review of the parenting arrangements after a set time to confirm that the arrangement is still suitable for the situation and is in the children's best interests.

Supervised Access Centres and Resource Centres

Some respondents said that more supervised access centres are needed. Parents need a safe and comfortable place for their access time that is also in the children's best interests. One way to promote the use of such centres might be through "Dad and Me" programs. These have proven so far to be unsuccessful, but more promotion might provide fathers with the encouragement that they need to use these centres to meet their access requirements and responsibilities. It was also suggested that such centres be officially accredited.

Some respondents said that resource centres should be developed that would provide parents with a comfortable and safe location for seeking advice about and clarification of the available services. A resource centre could also be an exchange location for parents. Some people made positive reference to the Alberta model with regard to parenting responsibilities. Others suggested that service providers should hold open houses so that the public could become more familiar with their services. They could also hold open houses specifically for other professionals involved in access-related issues.

Enforcement Officers

When access requirements are not being met, there must be a more efficient method of enforcement. There is much confusion about who is responsible for ensuring that access agreements are being adhered to. Parents often contact police and lawyers to enforce access requirements but neither is able to help. Alternatives were suggested, including the following:

- a parenting or enforcement coordinator/officer to help parents resolve access issues;
- a monthly open house for parents so parents can discuss their access problems with officials; parents could come to an agreement with this person's help or sit in front of a judge to consider the problem and come to a quick solution;
- legislation that clarifies the role of police in enforcement action and explains that it is not in the best interests of children for police to be involved in custody and access disagreements; and
- mandatory police enforcement only when violence may be a concern.

Child Advocate Worker

Child advocate workers could work with the children to determine their preferred custodial arrangements. The advocate would then work with parents and the legal system, if necessary, to confirm that the children's best interests are being addressed. This would reduce the number of situations in which access is denied due to the children's unwillingness.

CHILD SUPPORT

Child support guidelines are rules and tables that help parents and others figure out how much child support a parent will pay after separation or divorce. The guidelines were developed to help parents predict the amount of child support a judge would likely set, and to ensure that children in similar situations are all treated the same when it comes to child support. The *Divorce Act* and most provincial and territorial family support laws include guidelines on child support.

Four issues related to child support were addressed in the consultation document:

- child support in shared custody situations;
- the impact of access costs on child support amounts;
- child support for children at or over the age of majority; and
- child support obligations of a spouse who stands in the place of a parent.

The comments that follow do not necessarily apply to Quebec, which has adopted its own child support guidelines; these differ from the federal guidelines. The consultations in Quebec related to the former, and covered three subjects: support obligations from previous unions; the cost of shared custody; and support for children at and after the age of majority. The results of the consultations in Quebec are reported in Appendix C.

Child Support in Shared Custody Situations

Factors in Determining Whether the Shared Custody Rule Applies

Time as the Sole Factor. According to the child support guidelines, to have a shared custody arrangement a parent must exercise access to, or have physical custody of, the children for 40 percent or more of the time in one year. Several concerns were raised with regard to the 40 percent rule and to using time as the sole factor in determining shared custody:

- The 40 percent rule creates more stress in relationships and treats the children as pawns;
- Both custodial and non-custodial parents often attempt to arrange custody with the 40 percent rule in mind, and not their children's interests;
- The 40 percent rule links access and support payments, which diverts attention from the best interests of the children; and
- Time as a determinant encourages parents to demand time with the children in order to avoid paying support and without considering whether this situation is in the best interests of the children.

Some respondents would support replacing the 40 percent rule with the concept of "substantially equal" time, which would be a less arbitrary determination and would reduce the likelihood of parents fighting over an hour or two of the children's time.

Some respondents would support replacing the 40 percent rule with the concept of "substantially equal" time, which would be a less arbitrary determination and would reduce the likelihood of parents fighting over an hour or two of the children's time. It was suggested that this would be a more child-focused approach.

Others said that the sole criterion for child support should be the time that the parent is actually responsible for the children. This would include time that the parent does not actually spend with the child, including sleep time and school time.

Some parents incur significant access costs even though they do not have shared custody.

The key to reducing child support should not be whether the non-custodial parent incurs costs, but whether the costs of the custodial parent are reduced.

Cost as a Deciding Factor. The argument respondents made for using cost as the determining factor was that some parents incur significant access costs even though they do not have shared custody. If cost were to be used as a deciding factor, judges would need to determine which costs were legitimate (for example, clothing, health care, recreation and education). Respondents also said that the key to reducing child support should not be whether the non-custodial parent incurs costs, but whether the costs of the custodial parent are reduced.

Other factors to consider. Additional suggestions for determining whether shared custody applies included the following:

- The legislative default should be shared parenting with child support pro-rated; additional costs should be considered, and child support calculations should be based on a sliding scale;
- The principle that equal time does not mean equal money spent should be recognized;
- A more realistic percentage for determining shared custody would be 30 percent; and
- Child support for low-income mothers is inadequate, while child support for high-income mothers is out of proportion with their actual needs.

Determining Child Support Under Shared Custody

Under the current child support guidelines, judges consider three things when determining the amount of child support in shared custody situations:

- the amount set out in the provincial and territorial child support tables, by income for each parent;
- the increased costs of shared custody arrangements; and
- the means and needs of the parents and the children.

Figuring out how to calculate the child support amount in shared custody situations can be very difficult, and many respondents suggested ways to make it simpler. These include the following alternatives:

- When parents share the physical custody of their children equally, neither parent should be required to pay child support (others felt that this option would not be fair and may result in different standards of living in both households);
- The higher income parent must pay support, equating the two parents' incomes and creating similar standards of living in each home (these respondents believe standards of living should be the same in both homes to approximate the stability that children would have in an intact family);

- A formula would help when calculating support amounts (others said that custodial cases are too widely divergent to be subject to standard criteria or formula);
- Judges should have the ultimate choice and should make decisions based on the precedents set in past cases;
- Amicable parents can work together to create a budget and then have the judge review the children's expenses as set out by the parents;
- When the "substantially equal time" test is met in a shared custody situation, then the guidelines should set out a formula, include a multiplier and a set off for calculating child support; each parent's amount would be determined by using the multiplier;
- Use the minimum standard of living for a child (based on Statistics Canada information) as a foundation (this would ensure a basic standard of living for the child and would avoid the current problem of the standard of living of the receiving parent decreasing to an unacceptable level because of the child support amount set for the shared custody arrangement);
- Consider expenses as a proportion of overall income, rather than simply net expenses. This method would recognize that one parent may have a significantly higher income than the other and therefore may be able to spend more on the children; and
- Consider various circumstances, including Crown obligations under treaty obligations (concern was expressed about whether applying the child support guidelines would relieve the federal government of treaty obligations when custody is given to a non-Native parent).

Whatever method is used to determine child support under shared custody, it should be predictable, consistent and simple.

Respondents said that whatever method is used to determine child support under shared custody, it should be predictable, consistent and simple so that people can reach their own agreements outside of the courts.

Other suggestions included the following:

- Use a more common-sense approach and expand on best interests to include providing the best standard of living for the children. Balancing the children's needs with the parents' ability to pay child support could, along with the guidelines, be one factor to look at;
- Parents who have six-figure salaries should not need financial assistance to raise their children;
- Each parent with a low income should be able to qualify for the Child Tax Benefit;

- There should be an annual review of both the welfare of the children and the income of each parent. The review should be performed by a special body of the ministry of justice, not social services; and

- The child support guidelines should make it clear that the amount arrived at by any formula is a minimum, not a maximum.

Impact of Access Costs on Child Support Amounts

High Access Costs

When parents have unusually high access costs, combined with the amount of support the parent pays (according to the child support guidelines), either parent or the children could be in a situation of undue hardship. When making decisions about high access costs, parents, judges and others must consider the amount of time that the access parent spends with the children. Some respondents said that the existing guidelines were helpful when parents had unusually high access costs, but that high costs should be highlighted.

The reason for high access costs must be determined. Situations may be different and should not all be treated as equal.

Respondents felt, first and foremost, that the reason for high access costs must be determined, recognizing that situations may be different and should not be treated as equal. The most common situation is when distance separates the parent and the children. Respondents' opinions varied on whose responsibility it was to pay the costs for the children to visit the parent in that situation:

- Some felt that it was the custodial parent's responsibility to pay for the children to visit the non-custodial parent, and that the expense should come out of the support payments;

- Some felt that the non-custodial parent should pay for the children's travel costs;

- Some suggested that a trust should be set up for the children, into which the money currently provided as support could be deposited for the children to use to visit the parent;

- Some suggested that access and associated costs should be defined as a shared responsibility. Access would become an obligation of both parents and a right of the children. This would uncouple access from child support. However, it was also pointed out that having to bear some of the costs might affect the willingness and/or ability of the custodial parent to facilitate access; and

- Some pointed out that compensation for high costs should be tied to proof of access (rather than allowing parents to claim high access costs, which reduces the amount of child support paid, and then not use their access after all).

There are problems with the undue hardship process.

Under the current legislation, parents wishing to have their support payments reduced because of high costs must prove undue hardship. Some people suggested that there are problems with the undue hardship process, including the following:

- The calculations to evaluate parents' standards of living are complicated;
- It is difficult to assign a dollar value to elements of a person's standard of living. There needs to be another, simpler way to take access costs into account when deciding child support; and
- The definitions of *hardship* and *extraordinary expenses* need to be clarified and better implemented by judges to ensure consistent judgments.

Other respondents said that undue hardship should not automatically decrease child support amounts when the paying parent exercises access often, since the receiving parents' expenses may not decrease. An increase in a paying parent's access time may have little or no impact on the receiving parent's major expenses, such as housing.

Low Access Costs

Some respondents said that unusually low access costs only occur when access is not used. Currently there is no way to compensate custodial parents for additional costs resulting from non-access unless they can prove undue hardship (see discussion above).

A suggestion was made that support orders might split some costs 50-50, which would mitigate some of the burden on custodial parents.

Some respondents said that judges should not determine the amount of child support. Others said that a judge should make the decision, but that they should take into consideration each unique situation in doing so (for example, taking into account unusually high access expenses and balancing those with the adverse effect that any reduction in child support could have on the children's financial circumstances).

Additional suggestions included the following:

- Judges should set the child support amount in proportion to the income of both parents;
- There should be tax breaks when support payments place a person in financial distress;
- A mediator, not a judge, should examine each parent's summary of expenses and then work with the parents to get agreement on access costs and the child support required;

- The reasons for high access costs should be examined, and then the negative impact of lack of contact between the parent and the children weighed against the negative financial impact of reduced child support;
- It must be shown that the *children's* standard of living is affected by high access costs;
- A formula could be used to calculate support and high access costs, while still recognizing all situations as unique;
- There must be timely reciprocal enforcement between provinces;
- In cash-poor communities, there should be other options for paying child support (for example, paying with meat, fish and groceries); and
- There must be a form of child support and child support enforcement that acknowledges the reality of all northern situations.

The support payments situation should be reviewed periodically.

Respondents said that the support payments situation should be reviewed periodically to take into account changes in access or costs. Some people mentioned that software programs that help calculate child support amounts are useful when determining the standard of living of children in both households, including blended families. However, this software requires information from both households.

Child Support for Children at or Over the Age of Majority

Paying Child Support Directly to Children

Direct payments might ease tension between the parents; however, receiving parents still have costs.

Some respondents questioned whether the paying parent should have to continue to pay child support for older children to the receiving parent or be allowed to pay it directly to the children. Those in favour of direct payment suggested that this might ease tension between the parents. Those against direct payment stated that receiving parents still have costs, such as maintaining the home, to support their older children, even when those children are away at school for part of the year. They also felt that paying support directly to the children fails to recognize that child support is not an allowance for the children but is instead intended to defray the costs incurred by a parent arising from having responsibility for the children. A third option was also suggested: costs would be split and a portion of the support paid directly to the children while a portion continued to be paid to the custodial parent.

Some respondents raised other issues they felt would influence whether paying child support directly to the children would be appropriate, including the following:

- whether they were satisfied that the child support was being spent on the children;

- the ages and maturity of the children;
- the children's views; and
- whether the children were receiving counselling and education on how to spend the money.

When the custodial parent does not agree to direct payment, allowing a non-custodial parent to pay the children directly puts the children in the middle of a dispute between the parents.

These respondents also recognized that, in the absence of consent by the custodial parent or a court order, allowing a non-custodial parent to pay the children directly puts the children in the middle of a dispute between the parents, which is likely to be uncomfortable and awkward for the children.

Some respondents said that it was not important for receiving parents to agree to child support being paid directly to the children. They felt that the majority of receiving parents would not agree to this and that the decision should be left up to judges. Others felt that the input of receiving parents should be carefully considered, although their absolute agreement may not be necessary.

Providing Information About the Status of the Children

Some respondents suggested that receiving parents and older children should have to show that there is an ongoing need for child support.

Some respondents suggested that receiving parents and older children should have to show that there is an ongoing need for child support to continue beyond the age of majority. They supported amending the legislation to require receiving parents to disclose certain information annually to paying parents. This would include information about the status of the children, such as schooling, living arrangements, employment and their finances. This requirement would apply in all cases when support is to be paid for children at or over the age of majority, not just in those cases that include special expenses. (Special expenses are those expenses, such as tuition for post-secondary education, beyond what is covered by the child support table amount. Under the guidelines there is a section that requires parents to produce records to justify all special expenses. However, this provision does not extend to producing information about other expenses that the parents may have that are related to the table amount or another amount paid for older children.)

Other respondents recognized that such a requirement might be intrusive.

Other respondents recognized that such a requirement might be intrusive. However, they felt that paying parents have the right to know this information. They also felt that providing this information might reduce conflict by quelling some paying parents' suspicions that their support is being misused.

Respondents also highlighted that, in situations of family violence or abuse, the information would have to be confidentially provided to a mediator or judge and not directly to the paying parent. The judge or mediator could then disclose the required information to the paying parent discreetly, without putting the receiving parent into a conflictual situation.

Child Support Obligations of a Spouse Who Stands in Place of a Parent

Currently, under some provincial and territorial legislation, the biological parent has the primary obligation to pay support, while the spouse standing in the place of a parent does not. Some respondents said that there was no need to structure the parents' obligations in this manner, as there are many circumstances in which the biological parent has played little, if any, role in the children's lives, while the person standing in the place of a parent has played quite a significant role. It was suggested by some that the guidelines should remove the primary obligation of the biological parent.

Most respondents said that the question of how child support should be allocated among natural parents and spouses standing in the place of a parent is quite complex and is largely driven by the facts of each case. Given that a wide variety of circumstances could arise, respondents suggested the following:

- Rigid guidelines would result in injustice in a large number of cases;
- The courts should continue to exercise discretion and allocate child support in a way that best suits each individual circumstance; and
- The guidelines should, however, provide that this discretion will not be exercised to reward a lower amount of support than that to which the children would otherwise be entitled.

The courts should continue to exercise discretion and allocate child support in a way that best suits each individual circumstance.

Other comments included the following:

- What constitutes standing in the place of a parent differs by jurisdiction; therefore, the legislation must include a clear definition of *stepparent* and *person standing in place of a parent*;
- Stepparents should only contribute when they have played a parental role to the children during the marriage;
- It is not clear why a parent should receive money from biological parents and stepparents;
- The biological parent should pay the guidelines amount and consideration should be given to the costs of caring for any children in a new family arrangement;
- It is unethical for receiving parents to use their children as a "cash crop" and accumulate child support from multiple paying parents;

The legislation must include a clear definition of stepparent *and* person standing in place of a parent.

- The children should benefit from the financial support of all parents involved in their upbringing; and
- Judges should have the option to determine what approach would be most appropriate for each unique situation.

SUMMARY OF THE CONSULTATIONS

Consultations on child custody and access were held in the spring and early summer of 2001 in order to gather the opinions of Canadians on the following topics:

- best interests of children;
- roles and responsibilities of parents;
- family violence;
- high conflict relationships;
- children's perspectives;
- meeting access requirements; and
- child support.

The consultation process had two aspects: a paper-based process; and workshops. The paper-based process included briefs submitted by organizations and individuals; and feedback booklets, which were distributed with the consultation document. The workshops took place in every province and territory, and also included separate workshops for young people and Aboriginal people (although people from these two groups also attended other workshops).

Respondents submitted 2,324 completed feedback booklets, along with 71 briefs. Forty-six workshops were held, with approximately 750 participants in total.

BEST INTERESTS OF CHILDREN

A list of all the factors raised by respondents as affecting the best interests of children is provided on pages 15 and 16. These factors address the characteristics of the children, the historical parenting situation and forward-looking concerns.

Some respondents said that these factors should be specified in legislation, while others did not. Those in favour of listing factors felt that a list would help judges and parents make better decisions, ensure that concerns pertaining to children are systematically addressed, promote clarity and transparency in decisionmaking, and help harmonize federal legislation with that of the provinces and territories.

Those respondents not in favour of listing factors in the legislation said that a list would limit judicial discretion about the factors under consideration, reduce the legislation's flexibility and potential to evolve as it is used, and have the potential to increase conflict between parents and make rulings more complex. Respondents also said that a "checklist" approach to meeting children's needs was inappropriate.

ROLES AND RESPONSIBILITIES OF PARENTS

A list of all the factors raised by respondents as enabling good parenting after separation and divorce is provided on page 37. These factors address the nature of the parents' relationship, the recognition and validation of parenting abilities, access to children and to timely financial support, services (including education, counselling and alternative dispute resolution) and information support systems.

With regard to the five options for legislative terminology presented in the consultation document, respondents said that the post-divorce parenting arrangement should be dictated by the situation of the family. Therefore, the majority favoured a flexible option that did not default to a particular arrangement. This option was option 4: replace the current legislative terminology and introduce the new term and concept of *parental responsibility*.

However, there was also some support for options 1 and 5. Those people who felt strongly that children need a primary caregiver and that violence is a large consideration tended to support options that allow for sole custody. Those who felt strongly that both men and women are equally capable of parenting tended to support options that presume a 50-50 split of parenting responsibilities. These people supported option 5, although in some cases they said that this option was not worded explicitly enough with regard to the equal sharing of parental responsibilities, including the residence of the children.

FAMILY VIOLENCE

Respondents said that family law legislation should contain three points with regard to family violence:

- a statement that the best interests of the children are the first priority;
- a clear definition of *violence* (in particular, the scope of the definition); and
- an allocation of burden of proof.

Specific issues that respondents said should be addressed in any new legislation included mechanisms for investigating allegations of abuse, improvements to the family assessment process, and the role of the courts in incorporating family violence issues into custody and access decisionmaking.

With regard to the legislative options presented in the consultation document, respondents seemed to differ on what is in the best interests of children, and were polarized between making the children's safety and or the children's access to both parents the priority. Those who emphasized safety supported a rebuttable presumption of limited contact and decisionmaking input for the violent parent. Those who emphasized access to both parents supported a presumption of "maximum contact," except in situations when there is proof that the parent has been violent towards the children.

HIGH CONFLICT RELATIONSHIPS

Most respondents agreed that a high degree of conflict between the parents is not in the best interests of the children, since it draws emotional and financial resources away from them. However, there was disagreement about how high conflict relationships should be managed.

Some respondents said that high conflict was, in fact, another form of family violence. They felt that separating high conflict from family violence implies that a certain level of abuse is acceptable. Other respondents said that high conflict was a natural by-product of the divorce process. They felt that a high conflict relationship between parents did not mean that the parents were any less able to care for their children.

Those respondents who supported addressing high conflict relationships through legislative changes generally supported a combination of options 2 and 3 or of options 2 and 4 (from those presented in the consultation document):

- A combination of options 2 and 3 would involve mandatory dispute resolution mechanisms leading to a very detailed agreement; supporters felt that this would reduce the likelihood of further litigation and conflict between the parents; and

- A combination of options 3 and 4 would discourage the use of mechanisms that require cooperation and joint decisionmaking (i.e. most alternative dispute resolution mechanisms), but would still result in a very detailed agreement; supporters of this option felt that forcing parents in high conflict situations into alternative dispute resolution programs was unsafe and unlikely to be productive.

CHILDREN'S PERSPECTIVES

Respondents identified several factors that should be taken into account when deciding whether and how to determine the children's perspective on custody and access arrangements. These included the children's age and culture, the support and information available, the children's relationship with each parent, emotional well-being and special needs, and the relationship between the parents.

Respondents also said that some criteria should govern the process of including the children's perspectives, including these:

- children are not forced to participate;

- children are protected from repercussions;
- any hearings are private and recorded;
- children are directly informed of resulting decisions; and
- professionals involved are informed, trained and have a code of conduct governing their behaviour.

MEETING ACCESS RESPOSIBILITIES

Respondents said that there are two main issues to be addressed under this topic: denial of access and non-exercise of access. Respondents felt that both of these were equally detrimental to children's well-being, and proposed that tools such as parenting plans, parental education and counselling be considered as ways of encouraging parents to meet their access responsibilities.

Respondents recognized that it would be very difficult to legislate solutions to the non-exercise of access. They felt that forcing an uninterested parent to have contact with their children would not be in the children's best interests and might even be dangerous.

Respondents did, however, say that there were some points that could be touched on in the legislation to address the problem of denial of access. These were enforcement orders, alternatives to court-based solutions and the provision of supervised access centres.

CHILD SUPPORT

There were several aspects of child support addressed during the consultation, including the following:

- child support in shared custody situations;
- impact of access costs on child support amounts; and
- child support for children at or over the age of majority.

Child Support in Shared Custody Situations

Respondents had differing opinions on how shared custody should be determined. With regard to time as the determining factor (as is currently the case with the 40 percent rule), respondents pointed out that this links access and support, which may encourage access for the wrong reasons (i.e. to reduce support payments). However, respondents did recognize that time would be a relatively easy determinant to apply.

With regard to cost as the determining factor, respondents said that this could address many access situations (for example, cases in which access costs are very high, even though the time spent with the children is much lower than 40 percent). However, respondents also recognized that the question of which costs were legitimate would have to be addressed in the legislation.

In general, there was support for transparent guidelines or a formula-based approach, as it was felt that the existing child support guidelines have served to reduce conflict and litigation over child support amounts.

Impact of Access Costs on Child Support Amounts

Respondents generally felt that both unusually high and unusually low access costs should be addressed in child support guidelines and legislation. However, they recognized that, as unusually low access costs are generally a result of non-exercise of access, it would be difficult to compensate custodial parents without forcing access, which is not in the best interests of children.

Some specific points were made with regard to the undue hardship rule. Some respondents said that it was too difficult to prove undue hardship and that the concept is not clearly defined. Others felt that undue hardship should not automatically decrease child support amounts as high access costs may not reduce the custodial parent's expenses.

Child Support for Children at or Over the Age of Majority

Some respondents were in favour of paying some or all of the child support payments directly to children at or over the age of majority. They felt that this would reassure paying parents that the money is being spent on the children. Other respondents were not in favour of direct payment, pointing out that custodial parents still have expenses related to maintaining a home for the children, regardless of the children's ages.

There was also some support among respondents for increased transparency with regard to the spending of child support payments by custodial parents after the children have reached the age of majority.

ABORIGINAL PERSPECTIVES

Aboriginal respondents pointed out that, as their traditional view of children and children's best interests is fundamentally different from that of other Canadians, many of the issues raised in the consultation document were of minimal relevance to them. They raised the following points with regard to their perspectives on custody and access issues:

- Legislation must take into account Aboriginal culture and traditions (for example, the role of grandparents as caregivers, the role of elders and others in providing services, and the role of the wider community in supporting families and children);
- Services must be linguistically and culturally appropriate and must be available in remote areas; and
- Alternative solutions must be considered that take into account the reality of life in remote, often cash-poor communities (for example, the provision of food as child support rather than money).

SERVICES

Services were addressed under several topics during the consultation. Several services stand out as being necessary in all family situations, including parenting courses, child peer reference opportunities, and help in developing agreements (such as mediation, family counselling, and other forms of alternative dispute resolution). Other supplementary services are needed for families experiencing a high degree of conflict or physical violence. These include behavioural counselling and courses (for example, those on anger and addiction management), violence-related counselling, court-based mechanisms for developing agreements, appropriate enforcement mechanisms, and supervised access and exchange facilities.

In general, respondents felt that services (existing and new) should:

- be well publicized;
- be timely;
- focus on early intervention;
- provide follow up after a given period of time;
- be accessible (to men and women, to various cultural and language groups, to both urban and rural Canadians, and to various social groups); and
- be free or low-fee (including subsidies for transportation and childcare).

Respondents highlighted several alternative delivery methods that they said would improve awareness of and access to services.

NEXT STEPS

This consultation addressed many factors to be considered in the modification or revision of provincial and territorial legislation dealing with child custody and access, and the *Divorce Act*. While there were many varying opinions expressed on how to ensure that the legislation addresses the best interests of children, most respondents agreed that the current situation is lacking and that improvement is necessary. Respondents also made many comments on services, which included ideas on how to promote and enhance existing services, as well as suggestions for additional services that would be helpful to children, parents and others throughout the process of separation and divorce.

The results of the consultation, as captured in this report, will inform the Federal-Provincial-Territorial Family Law Committee's discussions on the child custody and access project as well as the discussions of federal, provincial and territorial Ministers responsible for Justice. They will form part of the background to the report to Parliament that the federal Minister of Justice will table before May 2002.

Putting Children's Interests First

APPENDIX A:

Report on Youth Workshops

Prepared by
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The authors wish to acknowledge the important contribution of
Dominique Meilleur and **Denis Lafortune**
to the youth consultation process and to the preparation of this report.

INTRODUCTION

BACKGROUND

As a signatory to the United Nations Convention on the Rights of the Child, Canada recognizes the importance of including the perspective of children and youth in consultations about changes to legislation and services. A number of strategies were developed to elicit the opinions of youth. As part of the federal-provincial-territorial consultations, the Department of Justice Canada arranged opportunities for young people to talk about services and programs that could help families when parents decide to live apart. It was expected that the participants' ideas would help the federal, provincial and territorial governments understand more about how laws and services could better reflect the needs of youth.

The Province of Saskatchewan sponsored a session for youth in March 2001, although this was separate from the youth consultation meetings described below. Six youths 15 to 17 years of age attended one three-hour session. The format and questions for that session differed somewhat from those reported here, so it is not appropriate to combine the responses. Whenever appropriate, however, information from the Saskatchewan session is included in the text. To respect the confidentiality agreement governing that session, the information is not identified as coming from there.

Youth discussion groups were also held in the Province of Quebec, the results of which were integrated in the consultation report for that province found in Appendix C.

OBJECTIVES OF THE YOUTH CONSULTATION

The objectives of this aspect of the larger consultation process were the following:

- create a meaningful way for youth to participate in discussions about policies that affect them, in accordance with the United Nations Convention on the Rights of the Child;
- provide a neutral, non-threatening and age-appropriate opportunity for youth to talk about parental separation and divorce, including what worked well and what could have been improved when their parents separated or divorced; and
- elicit the views of youth with regard to the sections of the discussion guide on roles and responsibilities and children's perspectives.

METHODOLOGY

Recruitment

Youth workshops were held in Manitoba (Winnipeg), Ontario (Toronto) and Quebec (Montréal). Random calls by local market research firms generated a pool of potential participants for each city. The selection criteria included the following variables: parents living apart a minimum of three months, at least one youth between the ages of 10 and 17 years in the household, youth available on the day of the planned meeting and willing to participate in a group discussing how divorce affects children, and parental consent to the youth's participation. With parental consent, the family's name was provided to the consultation session facilitator.

The group facilitators contacted parents located by the market research firms. During a telephone interview, parents were informed of the objectives of the consultation sessions, and confidentiality and consent issues were reviewed in detail. The parents had an opportunity to ask questions about any aspect of the process.

In the screening process, the facilitator first had to ensure that the parent contacted had the legal right to consent to his or her son's or daughter's participation in this project. Second, parents and the facilitator discussed whether participation could in any way jeopardize the youth's adjustment to parental separation, since the topic for discussion had the potential to precipitate an emotional reaction. When requested by either the youth or the parent, the group facilitator also spoke with the potential youth participant about the planned meeting. The facilitator asked screening questions about the following:

- youth's age and sex;
- duration of parental separation;
- type of custody arrangement (i.e. sole or shared);
- parents' current legal status (i.e. separated or divorced);
- the custodial parent's occupation and work status;
- ethno-cultural affiliation;
- language spoken in the home;
- family violence history;
- child abuse history;
- youth's significant medical and mental health history;
- family's significant mental health history;
- school difficulties;
- age-appropriate socialization; and
- counselling history, including whether the child, family or both had received counselling related to parental separation.

As long as there were no apparent contra-indicators, such as severe mental health problems, and the parent with the right to consent was agreeable, the child was invited to participate. In cases of shared decisionmaking, the consent of both parents was required. Written consent was required from all parents and youth participants. The parents received a resource kit and the participating young people received resource information and an honorarium at the end of the consultation session.

Consultation Group Plan

The Winnipeg and Toronto meetings were conducted in English by the same Anglophone facilitator. The Montréal meetings were conducted in French by a Francophone facilitator. Two sessions were held in each city. The first session included youths 10 to 14 years of age. The second session included youths 14 to 17 years of age. The Winnipeg sessions were held on a Saturday morning and afternoon. The Toronto and Montréal sessions were held on a weekday in the late afternoon and early evening. Each session was two hours.

A psychologist experienced in working with youth and groups facilitated the sessions. A second mental health professional (a social worker or psychologist) attended the sessions and acted as a resource person for the participants as well as a note taker (using flip charts). One representative from the Department of Justice Canada attended each session as a note taker. In some instances, one representative of the province attended sessions as a note taker.

Six youths participated in a single three-hour session in Moose Jaw on March 31, 2001. A trained mediator led this session, along with a youth co-facilitator.

Sessions were held in private meeting rooms at facilities such as a university (Montréal), a private research firm (Toronto) and a community centre (Winnipeg). No one-way mirrors were used, and the meetings were not recorded. Separate waiting areas were provided for parents who brought participants to the meetings. Participants and parents were told that the information provided during the sessions would be considered confidential and that it would not be disclosed except in aggregate form. No individual young person would be identified. This policy was reviewed with the participants at the beginning and end of each consultation group session.

The group facilitators reminded participants that each group would meet only this one time. Participants were not required to describe their personal situations in detail. By way of introduction, the young people were asked only to tell the group their first name, who the other members of their family were, and where they were living. An additional ice-breaker activity was used in one of the Winnipeg groups. Participants were advised that it was not necessary to reach a consensus on any of the issues discussed. Nevertheless, these young people agreed on many points, and these are summarized as follows.

Consultation Group Questions

The following questions were asked in all six sessions, and were translated into French for the Montréal sessions. Participants also had an opportunity at the end of the session to comment on anything else they felt was important.

1. What do you remember about your parents' separation?
   - What was it like for *you*?
2. How were you involved in decisions your parents made about living apart?
   - Are you involved in these decisions now?
3. What helped you, and who helped you, when your parents separated?
   - Was a counsellor (e.g. a social worker or psychologist) helpful to you?
   - What *could* have helped you?
4. What (other) professionals did you meet as a result of your parents' separation (e.g. a lawyer, mediator or judge)?
   - What role did they have?
5. If you had friends whose parents were separating, what would you tell them?
6. What would help your friends?
7. What advice can you give parents or people who work with youth that would make separation easier for youth?

THE SAMPLE

Eighteen youths participated in the Winnipeg sessions, 22 in the Toronto sessions and 23 in the Montréal sessions. The Winnipeg sessions were held on June 16, 2001, and the Toronto and Montréal sessions took place on June 21, 2001.

Of the 63 young people who participated in the consultation workshops, 30 (47.6 percent) were male and 33 were female (52.3 percent). The youngest participant was 10 years of age and the oldest was 17. There were 13 participants (20.6 percent) who were 10 or 11, 15 (23.8 percent) who were 12 or 13, 14 who were 14 or 15 (22.2 percent), and 21 (33.3 percent) who were in the 16 or17 year category.

Parents provided the following information to the facilitators during the telephone screening interviews. There were relatively few recent separations: only three (4.8 percent) participants' parents had been living apart less than one year. Nine participants' parents (14.5 percent) had lived apart two to five years, 26 (41.9 percent) had parents that had lived apart six to ten years, and 24 (38.7 percent) had been separated more than eleven years. In most cases (47 or 75.8 percent), one parent had sole decisionmaking responsibility. There was a shared decisionmaking arrangement in 10 cases (16.1 percent). There was no agreement about decisionmaking in five cases, (8.1 percent). Given the length of time parents had lived apart, it was not surprising that the majority of parents were divorced (36 cases or 58.1 percent). Eighteen parents indicated they were separated (29.0 percent), and eight parents (12.9 percent) were unclear about their current legal status. The majority of the youths lived primarily with their mother (59 youth or 95.2 percent).

The participants' families represent the broad social spectrum in Canada. Parents' reported occupations ranging from unskilled labourer to professional. Most of the custodial parents were working (47 or 75.8 percent) and the remainder reported being unemployed or on government assistance.

Custodial parents were asked about their ethnic or cultural affiliation. Parents in 43 families (69.4 percent) identified themselves as "Canadian." In four families (6.5 percent), one or both parents said they were Aboriginal (i.e. First Nations or Métis). In 15 families (24.2 percent), one or both parents were born in other countries. Most parents reported fluency in one or both of Canada's official languages (58 or 93.5 percent).

A history of family violence was reported in 16 families (25.8 percent). Child abuse concerns were described by seven (11.3 percent) parents. In 11 instances (17.7 percent), parents identified significant factors in their child's medical history (e.g. surgery, head injury related to a motor vehicle accident or chronic illness). Mental health concerns (e.g. attention deficit hyperactivity disorder or clinical depression) were reported for eight (12.9 percent) of the youths and 14 (22.6 percent) of the families (for family members other than the participating youth: substance abuse or anger management, for example). School difficulties were noted for 18 (29.0 percent) of the participants. In only four cases (6.5 percent) did parents report concerns about their child's socialization skills. A small number of participants (6 or 9.7 percent) had received counselling related to separation and divorce. A larger number (13 or 21.0 percent) had received counselling about other issues.

REPORT ON THE WORKSHOPS

OVERVIEW

"Divorce is about law and about feelings: you need to make sure both are in the right place." (Youth participant)

Participants and parents expressed enthusiasm for this project. Many of the youths were surprised that the government would be interested in and value their opinions. For example, one youth said, "We don't pay taxes and we don't vote. Our opinion doesn't count." The sessions were lively and the youths had important ideas to share, along with their advice to parents, professionals and policy makers.

The participants were not screened for their level of verbal ability or comfort with a group situation. Very few of the participants knew each other before attending the sessions, although two young people in one group recognized each other and told the group that they live in the same neighbourhood. None of the participants had met the facilitator or resource person before the session. Despite this, the youths quickly made themselves comfortable and responded to questions in a thoughtful manner. The group facilitator and resource person ensured that every participant had a chance to respond to the questions during the session.

The consultation sessions represented a one-time opportunity for young people to come together to talk about the experience of parental separation and divorce. Their ideas and comments are summarized below with, whenever feasible, direct quotes illustrating their points.

Parents of many of the participants had separated many years ago so their recollections about what transpired at the time of the separation were limited by the passage of time. Nevertheless, participants described how family change continues to be a major factor influencing their lives. In what seemed to be a message to the group facilitators, as well as parents and policy makers, one participant said, "Words can hurt more than you know. There can be scars for life." During the sessions, youth participants articulated the specific ways that parental separation and divorce affects them. Their experiences are summarized below in relation to each of the questions posed during the sessions.

Regardless of the key variables identified above (i.e. age and stage of development, the duration of separation, and the type of custody arrangement), participants brought out six consistent themes during the meetings:

- parental conflict;
- parental abandonment or lack of interest in the child;
- voice of the child;
- availability, responsiveness and accountability of professionals;
- child support; and
- concern about the future.

In each city, regardless of age or duration of separation, participants repeatedly focused on the negative impact of ongoing parental conflict. One youth reported his fantasy about how parental conflict might be resolved. "I dreamt that a cop put my parents in jail. They were handcuffed to the floor until they talked it out and agreed."

As will be described below, opinions differed about whether children should be asked to make decisions about how they will be cared for when parents separate. However, the vast majority of participants wanted services and divorce legislation to provide a way for their voice to be heard when decisions were made.

Many participants thought that professionals (mental health or legal) could be an important resource for children when parents are separating. Few of the Montréal participants reported involvement with mental health professionals prior to attending the youth consultation session; nevertheless, they were skeptical of the ability of psychologists, in particular, to be responsive to youth. On the other hand, many of the Winnipeg participants strongly recommended that every child whose parents separate be offered the opportunity to speak with a counsellor.

During the meetings it became clear that counsellor availability and responsiveness are critical factors for youths. They want counsellors to be available in comfortable, youth-oriented settings.

One participant said that "toys in your office help me to know you like children." Older participants emphasized the importance of being able to drop in to see a counsellor, rather than having to make an appointment. There was agreement that while listening was important, counsellors also needed to interact with children, give opinions, make suggestions and engage in discussion—not just take notes.

The accountability of professionals was also extremely important to the participants. One said that he had seen several lawyers: "…I had a voice but I don't know whether they told the court what I said." Another participant poignantly described feeling betrayed by an assessor. "The assessor said that what I talked about would be confidential. Later I found out that everything I said was in the report for court."

The youth workshops focused on custody and access issues, not child support; nevertheless, participants raised the issue of child support at every meeting. They were adamant that child support was important. They viewed payment of a child support obligation as a way that paying parents show that they are interested in and care about their children. Youth expect the government to strictly enforce child support arrangements.

Participants also described their concerns about the future. They expressed worry about how their lives and relationships would be shaped by the legacy of parental separation and divorce. For example, one participant interrupted the group discussion to say, "I fear for my generation. Divorce is all we know." This person wanted to know whether other participants thought they would marry and have children when they became adults.

What do you remember about your parents' separation? What was it like for *you*?

"My life is like a roller coaster."

This was one participant's description of divorce. Another participant said he felt like he was living in "a double world." Despite this, participants seemed to accept the idea that some adult relationships are not successful. Divorce was not viewed as unreasonable. For example, one youth said, "Divorce is okay. If the marriage doesn't work, just end it." Some participants discussed hearing different stories from their parents. Virtually all of them emphasized the importance of being honest with children. *There was general agreement that children have a right to accurate information and to understand and be informed about the specifics of the custody and access arrangement. They stressed the importance of parents considering the impact of their decisions and behaviour on children.*

Participants described a range of reactions to and feelings about separation (i.e. frustration, confusion and anger). One youth stated, "I got mad," and he told his parents, "You need a divorce; you shouldn't be together." Another commented, "Home doesn't feel like home anymore." Yet another said, "Even at age four I felt the pressures of my parents' separation. I felt the tension and the fights."

Other participants, whose parents had separated some time ago, reported that "now it just feels normal." Still others pointed out that they had no apparent reaction at the time of the separation—it came many years later. This group of participants talked about how their reactions and feelings affected relationships with siblings and at school. Several participants said they were more aggressive and acted out, attributing these behaviours to unhappiness with the family circumstances.

Four important issues surfaced during this discussion. The first related to the availability of both parents. Many participants described feeling abandoned by one parent. Referring to times when one parent was supposed to pick him up, one participant stated, "I waited for him, and waited. He didn't come. Eventually I stopped caring." Another participant said, "If he was part of my life, he wouldn't have to ask me all these questions—he would know these things." The youths described abandonment in terms of time (e.g. disappearing from a child's life or being unreliable) as well as financial resources (e.g. failure to pay child support). In contrast, one participant stated that parental divorce had little, if any, impact on his life because he saw both parents all the time. *There was general agreement about the importance of parents meeting their financial obligations for children and continuing to be psychologically and physically available to children after separation.*

The second critical issue raised by participants was the impact of ongoing parent conflict. Participants described how difficult it was to hear one parent criticize and complain about the other parent. Participants indicated that when parents did not get along, this sometimes affected their residential schedule. They see this as unfair, and are resentful about the impact on their lives. Several participants suggested that continuing conflict between parents sets a poor example for children. *There was general agreement about the importance of parents resolving differences and working together to raise children, regardless of their marital status.*

The third major issue concerned the length of time children spend with the non-custodial parent. Many described feeling disappointment and anger that this time did not meet their needs. It became an obligation, rather than something to which they looked forward. Some participants questioned whether the non-custodial parent was really interested in them. Many participants felt that the non-custodial parent's home did not adequately reflect their needs and life. They expressed resentment about being left in the care of a friend or relative, rather than being with their parent. Others did not like sharing all of the time with a parent and his or her new partner. *There was general agreement that non-custodial parents should ensure that time they spend with children is meaningful.*

Lastly, many participants talked about the impact of parents' new partners. Several youths stated that new unions are difficult for them because they have no power and no say in what happens. Often, other children are involved. Participants recognize that relationships are complicated, and that sometimes there is less time for children. One youth told us, "When I think of him being there for the new baby, and not for me, it hurts." *There was general agreement that parents should exercise caution when entering new relationships and minimize the potential for negative impact on children from prior relationships.*

How were you involved in the decisions your parents made about living apart? Are you involved in these decisions now?

The participants had varying opinions and experiences with respect to decisionmaking about caring for children. One participant concluded, "The issue is power. Parents have more power than children."

Some youths described being very involved in family decisions. One participant said he helped his mother decide what bills to pay because there wasn't enough money to cover expenses. Another stated that he did babysitting and contributed his earnings to the family's resources to help make ends meet. Others stated emphatically that decisions, particularly those about residential schedules, were not the children's responsibility. Participants had differing reactions to their current residential arrangements. Two participants in different cities stated that going between their parents' homes is inconvenient. Another participant suggested that perhaps children should stay in one house and parents travel back and forth.

There was extensive discussion about how parents and professionals can tell whether children are ready to contribute to the decisionmaking process. Participants identified a number of factors, including the children's level of anger, pre-divorce experiences and the desire to blame or punish one parent. The youths concluded that every situation is different and that one method or rule for decisionmaking may not suffice. As one youth suggested, "What's best for the child should be a combination of parents' ideas and the child's ideas." *There was general agreement that children's opinions should only be requested when they will influence the decisionmaking process.*

Other participants emphasized how difficult being involved in decisions can be for children. They identified the loyalty conflicts that emerge when children are in a position to choose between parents. Older participants expressed concern about whether younger children "were mature enough" to contribute to decisionmaking. They described how younger children could be confused or swayed by parental promises. Several participants reported parents suggesting that if they moved to their home, there would be no child support obligation.

A smaller group of participants raised the issue of parent re-introduction. They were referring to parents who express a desire to reconnect with children after a significant length of time apart. Participants identified the difficulties inherent in the re-introduction process: many questioned a returning parent's interest and goals. In contrast, some other children who had experienced parental abandonment expressed a longing to reconnect with a parent. Some indicated that they would search for their parent when they were older.

The majority of participants favoured a process that allowed children to make their wishes and preferences known. One participant challenged policy makers and the legal system when he stated, "Don't make decisions for us; make them with us." *There was general agreement that siblings should remain together and that decisions about parenting arrangements should foster consistency to the greatest extent possible in the children's school and peer relationships. Participants emphasized the importance of each parent's home being a comfortable environment for children.*

In every session, participants noted the importance of having professionals, such as a mediator or judge, available to help parents agree on how they will care for their children.

What helped you, and who helped you, when your parents separated? Was a counsellor (i.e. a social worker or psychologist) helpful to you? What *could* have helped you?

Participants identified four types of help that positively influenced their experience of parental separation and divorce. As described earlier, the youths emphasized the importance of parents resolving their conflicts. The youths suggested that child adjustment was more likely when parents lived near each other (preferably in the same area but at least in the same city). Participants looked to their parents to develop constructive co-parenting and parent-child relationships. Most participants felt strongly that children should not have to go to court or testify about their parents. *There was general agreement that parents need to acquire skills to communicate effectively about children.*

Second, participants described the importance of support systems. Siblings were identified as a key resource. Friends and other relatives, such as grandparents, were also seen as fulfilling an important role in children's lives. Some participants recommended keeping a diary, and others mentioned pets as a source of support. Still other participants talked about how activities and hobbies helped them to cope.

Some participants mentioned books they had read or videos they had seen. There was a diversity of opinions about what sorts of resources would be most appealing to children. However, participants urged policy makers to ensure that resources are up-to-date, include realistic situations and are geared to specific age groups. *There was general agreement that children should be involved in creating the resources to ensure their usefulness and acceptance by the intended audience.*

Several participants suggested that mental health professionals, such as social workers or psychologists, were important potential resources for children. A number of the young people emphasized that it did not work simply to force children into counselling. Most participants seemed to grasp the importance of identifying feelings. One youth stated, "The problem is I don't let it out. I keep anger in." One participant commented, "I wish I had been to a group—my parents, too—and had the opportunity to hear from a professional." Another participant's message to policy makers was clear: "Don't let kids feel alone or empty." *There was general agreement that support systems were valuable for helping children identify, understand and deal with the myriad of feelings resulting from parental separation and divorce.*

Third, participants returned to the abandonment theme noted above. They emphasized the importance of maintaining contact with both parents. One participant advised other session participants to "always make sure you have their telephone number. Stay in touch with your parents." Another participant said that what really made a difference was his father's continued involvement in his life.

The fourth theme was safety. Participants described the importance of ensuring that children are protected from emotional and physical abuse. They viewed this as the children's basic right and an obligation on the part of adults.

What (other) professionals did you meet as a result of your parents' separation (e.g. a lawyer, mediator or judge)? What role did they have?

Few of the participants reported having their own legal representation. Several youths thought that if the parents could not reach an agreement, then the children should have a legal representative to ensure that their point of view was heard. As one participant noted, "You might need someone to speak for you." On the other hand, some participants reported that "Questioning from lawyers and other family members led me to believe I needed to choose which parent's side I wanted to be on." Another commented, "I felt pressure about answering questions when I didn't know everything that went on." Participants strongly recommended that lawyers have training in psychology and be more sensitive to child development issues and concerns.

Consistent with the background profile outlined earlier, some of the youths had had prior contact with a mental health professional. In some instances this support was seen as valuable and in others not. *There was general agreement that professionals who work with children should clearly identify their role and the purpose of the contact. Professionals should be responsive and ensure that children have an opportunity to express their point of view.*

Participants emphasized the importance of professionals really listening to the children's perspective. Counselling, participants suggested, would be more effective if the mental health professional interacted openly with children, responded accurately to questions and respected confidentiality agreements. Participants identified the components of counselling that would help them: provide guidance about dealing with the situation, help deal with anger, and help to "get rid of the energy inside me." One participant was explicit about what he did not want: "I don't want pity. I don't want someone to ask, 'Are you okay.'" Participants were also looking for support with regard to their parents: "Don't suggest I talk to my parents when I really don't want anything to do with them." *There was general agreement that professionals should take children more seriously.*

Many participants seemed to understand that when parents could not agree about how children would be cared for, a professional might be called upon to investigate and make a report to the court. Several participants stated that in high conflict situations, it would be beneficial to have an opportunity to tell a neutral third party how they were being treated. *There was general agreement that in such situations professionals had a responsibility to help children feel comfortable. In the participants' opinions, this means that professionals would review reports or other materials with them prior to submitting such documents to the court.*

If you had friends whose parents were separating, what would you tell them? What would help your friends?

Participants had many suggestions for other young people whose parents might be separating. In every one of the six sessions, they repeatedly emphasized the importance of children understanding that divorce was not their fault. One participant said she would tell her friend

"Don't try to find out what you did wrong." Another said, "Your parents don't hate you. Don't hate them." They would urge other young people not to get "caught in the middle" or "take sides."

Some participants thought children had a responsibility to maintain peace in the household. Others suggested that "if you only see one parent, try to live your life without worrying about the other parent." They would encourage their friends to stay calm.

In every session, participants repeatedly stated that they did not want parental separation and divorce to be the focus of their life. They said that they would advise friends that "life continues after divorce." They would encourage their friends to try to be positive and to use activities to distract themselves from difficulties in the home and from parental conflict.

Although in one group there was skepticism about the value of professionals, most participants indicated they would recommend that their friends "talk to someone."

What advice can you give parents or people who work with youth that would make separation easier for youth?

Analysis of the discussion revealed five types of concerns or advice. Participants emphasized the importance of identifying and taking account of **children's needs** when parents separate or divorce. They said that "children need stability." There seemed to be a feeling among participants that parents and professionals did not always consider the impact of decisions on children. Some participants felt that parents thought more about themselves than about their children. Many participants said that they would have liked an opportunity to meet other young people in the same situation "in a group like this" (the workshop). *There was general agreement that children need information about the family changes as well as time to make necessary adjustments.*

The second theme that emerged was **parent conflict**. The participants' message was explicit and emphatic. Several participants recommended that parents receive therapy. As one youth said, "Parents should remember they are role models for children." They stressed that parents and policy makers must know that "…whatever happens, parents have to stick by their children. They need to separate children from the rest of the divorce. Children aren't just another possession." *There was general agreement that participants expect parents to resolve their differences and work together on behalf of the children.*

Third, participants challenged professionals and parents to find meaningful ways to include **children's voices** in the decisionmaking process. As one participant succinctly stated, "We're not dumb; we know things." Participants recommended that children be asked for their ideas, rather than being forced to choose between parents. For example, one participant reported wanting a place to run away to, "…where no one was going to ask me to choose sides." Participants recognize that options need to be available. They want parents to "listen more and take what we say seriously." One participant wondered whether "…you could make a law that forces parents to be responsible." Several participants suggested that children need skills to help them have a voice. *There was general agreement that adults (parents and professionals) have an* *obligation to create situations that encourage children to talk without fear of recrimination or censure.*

Fourth, participants expressed concern about the **lengthy process** and how difficult it seems to be to resolve issues and obtain a divorce. Many participants also stated that "divorce is too expensive." One participant wondered why "…divorce had to be an eight-month court battle." Another youth recommended that "…there should be scholarships for parents" who need financial support to pursue legal options. *There was general agreement that decisions affecting children's lives should be made more quickly, and provision be included allowing decisions to be changed when necessitated by developmental needs or circumstances.*

The fifth theme was **child support**. As mentioned earlier, many of the participants (particularly in Toronto and Winnipeg) had considerable knowledge about child support issues and expressed serious concerns about non-payment of child support obligations. They advocated that the government impose strong enforcement measures. They viewed child support as an expression of caring and concern on the part of the paying parent. They saw this as important, even when the receiving parent had sufficient economic resources to support the children. One participant suggested that "…the money might be needed later. It would be good to know it was there. I could use it for university."

Lastly, participants returned to their earlier concerns about parents' new relationships. They urged parents to "go slow." One participant stated, "I've put my life in that family. How can he [stepfather] just come in and take over?" Several participants had experienced living in a blended family. One youth described how a parent's new relationship can affect children of a previous union: "Parents are selfish; they put their own relationships first. I couldn't go up to my dad and talk to him in front of his girlfriend, so then I stopped talking to my dad."

CONCLUDING COMMENTS

Participants in the workshops described how parental separation and divorce affect their lives. On the one hand, they identified their disapproval of parents who are unable or unwilling to resolve their differences. As one participant explained, "I still love my parents but I have to understand that's how it is. It's hard to respect parents because of their behaviour."

On the other hand, participants seemed to accept that not all relationships are successful and that some do not continue. Many participants were able to identify positive aspects of divorce, such as increasing one's independence, learning from mistakes and becoming a stronger person. They expressed concern that parents did not always work hard enough on their relationships, both before and after the divorce. Many of the youths acknowledged that it is now harder to trust adults. Some participants were clearly burdened by their parents' divorce, and had assumed or were given responsibilities beyond their years (e.g. involvement in financial decisions). One participant advised the other youths, "You have to look after your mother, because your dad's not there anymore."

Young people are looking to parents and policy makers to create effective and responsive services that support children when parents no longer live together. They expect child support obligations to be fulfilled. They want to learn skills that will enable them to contribute to the decisionmaking process. They expect professionals to be available, youth-oriented and responsive to their needs. They worry about the future and their ability to be successful in relationships. They are searching for effective role models and want parents to take more responsibility for preparing them for adulthood.

This consultation process was designed to ensure that the perspective of young people is included in discussions about legislative reforms and services. It is appropriate to conclude with two comments from the youth participants:

"One program, one questionnaire, isn't going to help everyone because each person's history and experiences are different."

"Kids should come first. We are the future."

Putting Children's Interests First

APPENDIX B:

Report on Aboriginal Workshop

INTRODUCTION

A workshop on Aboriginal perspectives on custody and access was held in Ottawa on June 25, 2001. The workshop began with an opening prayer and greeting from an elder of the Bear Clan. In the opening ceremony the elder explained the smudge tradition, including all of the medicines and their healing properties. The elder also spoke about the Creator and the importance of knowledge of the spiritual world.

With respect to the discussion topics, the elder reflected on the responsibility of parents and elders to give children the guidance they need to ensure they have a good life in all ways. The elder also mentioned the importance of values, especially those of the family. He emphasized that elders, particularly grandfathers and grandmothers, are significant, since they have experienced life to the fullest. Elders possess a wisdom that must be acknowledged and respected. Additionally, the Bear Clan elder mentioned the gifts of Mother Earth, such as water and food, and the importance of acknowledging all of creation.

The opening ceremony concluded with a prayer in the elder's own language.

The following topics were discussed in the workshop:

- the best interests of children from the Aboriginal perspective;
- the roles and responsibilities of parents; and
- custody and access issues concerning Aboriginal peoples.

The facilitators of the Aboriginal workshop were Mark Dockstator and Deborah MacGregor.

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

From your perspective, identify the needs of children when parents separate and divorce (e.g. cultural and familial systems)

How are children affected by separation and divorce?

Community and Extended Family

Participants said children need continuous support from the extended family and the Aboriginal community. The extended family goes beyond the immediate family to include the clan family, encompassing teachers, elders and spiritual leaders. Participants noted that although there are various definitions and perceptions of the family and community, the Aboriginal perspective must be acknowledged and respected. Therefore, it is necessary that the courts and legal system acknowledge the Aboriginal community's input regarding the best interests of children. The Aboriginal community is considered vital to the healthy spiritual development of children.

Participants expressed concern that women in situations of violence are often taken to shelters too far away from the community, and are unable to maintain contact with their children. Participants suggested that the perpetrator be removed from the home and that the mother and children stay within the community.

Children Have Different Needs

Participants agreed that children must feel grounded—culturally, spiritually and emotionally. They need to be prepared for adulthood through the teaching of traditional values, knowledge and responsibilities about what it means to be a woman or a man. Participants emphasized that monetary wealth is not as important as cultural wealth in Aboriginal communities. It is important to ask children what they want and to respect their views and opinions. Children need to lead a good life; they should be taught to follow the guidance of the medicine wheel, focusing on kindness, honesty and a strong identity.

Participants discussed the need to avoid the legal system to ensure children's best interests are protected. They acknowledged that children are very perceptive and that they all have individual needs. Factors influencing children's needs are age, culture, spiritual background, relationships, family history and safety from violence.

Support Services

Participants said that there must be adequately trained intervention services to ensure that all of children's needs are met. In some cases, the participants suggested, the children's best interests might be better protected in the city (off reserve) because of the availability and accessibility of resources and services. Information must be provided to children in a clear and comprehensible format for them to understand.

Mediation

Participants suggested a mediation service that would comprise an elder as facilitator of the discussion between the parents. The mediation and discussion would focus primarily on the best interests of the children (e.g. their spiritual and social development). The "circle" was suggested as one way to assess these interests since it ensures that there is equal participation by service providers, families and elders in the discussion.

How can an understanding of the children's perspective be gained? Identify an appropriate approach.

To help understand a child's perspective, participants suggested that those who are close to the child (e.g. siblings) could speak to him or her. Also, much can be learned from observing the child's actions. If a psychological assessment is to be done, participants felt that an elder should be involved to ensure that the child is properly heard and understood. Children should have choices about to whom they speak.

ROLES AND RESPONSIBILITIES

Describe the roles and responsibilities of parents to their children after separation or divorce.

How can parents continue to maintain a relationship with the child?

What support should be available in the community to help parents?

Responsibility of Parents and Extended Family

Children are the responsibility of all family members, including the extended family. Workshop participants said that, even after separation and divorce, the responsibilities of the family do not change. The elder who opened the workshop gave the example of the Naming Ceremony, in which a "sponsor," who is not biologically related to the child, is honoured with tobacco and accepts the responsibility of being a caregiver. With regard to grandparents, the elder explained that a grandchild is a "double blessing," and grandparents have responsibility for both their own child and the grandchild. Participants agreed with the elder on the importance of striving to give children a good life, and emphasized that parents must realize that children are "sacred beings" and a gift from the Creator. Participants also noted that parents may need counselling, education and support to ensure they meet their responsibilities.

Teachings and Knowledge

It is necessary to foster the spiritual life of children to ensure their healthy development and to help them maintain an awareness of their identity throughout life. Children must be taught understanding, purpose and reason. The elder also spoke of the symbolism of fire and water as representing male and female energies. These symbols are part of the ceremony of marriage and are the medicine of men and women. The caregiver must ensure that children receive this good medicine.

Changing Needs of Children

The connection among family members is very significant in distinguishing roles and responsibilities of parents. Workshop participants acknowledged that parental roles are, in many instances, specific to the sex of the child. For example, girls going through puberty and entering womanhood should have the opportunity to learn from their mother and grandmothers. Parents and caregivers also must recognize the "fast-life" stage for adolescents, as this is most often when children are in need of help. The elder noted that there are certain ceremonies that celebrate this rite of passage.

Community Support

Participants emphasized that the community is responsible for the support and care of the children, and identified a need for more positive role models in the community to ensure a safe and healthy life for children. Participants stressed that support services should recognize the ability of the extended family to care for a child rather than child welfare programs or foster parents. A strong sentiment was voiced about the impact of removing a child from an Aboriginal setting. Participants agreed that all variables should be considered when determining custody and access, and that there should be regulations allowing the community to go to court and to have input into custody arrangements. Participants said there should be legislation to compel judges to consider Aboriginal values in custody disputes between Native and non-Native parents.

Financial Support and Custody Arrangements

Some standards are in place to effectively assess who is capable of providing financially for children, but participants expressed concern about who would be financially responsible when both parents are receiving financial assistance prior to the separation. In addition, participants asked questions about the treaty obligations of the government when one parent is allocated financial responsibility. There is a need to clarify what exactly are the parents' financial obligations.

CUSTODY AND ACCESS

What are the custody and access issues concerning Aboriginal peoples?

One of the primary concerns of the participants was children's loss of culture and traditional knowledge when they are removed from their home. A participant explained that when children are taken away from the community, they are not able to experience and learn the traditional ways that are unique to their heritage. Another participant added that there is a great need for culturally sensitive and accessible support services, especially in the North.

Inuit Communities

An Inuk explained how Inuit have little access to services and, while willing to work with the government, have received no resources or responses to their requests for support. Inuit have limited access to the legal system due to inadequate financial resources, and they cannot afford lengthy court battles. However, traditionally there are few divorces among Inuit, as elders provide guidance in disputes, and the courts are used only when a solution cannot be found.

Inuit single parents, especially women, face great difficulties. For example, many Inuit women who are victims of violence do not seek legal action since the court puts the onus on women to prove their case, which creates an intimidating environment for them. Moreover, in remote communities, people may have to wait months before the circuit court comes, and when it does, the proceedings are not private; rather, they are held in front of the community. Because Inuit do not rely on the legal system, women do not usually get court orders, so when a kidnapping occurs, for instance, the RCMP cannot respond.

Many women do not have work in the communities, and in some places there is little access to education and training. Also, Inuit women may be at a disadvantage when their ex-partner is non-Native because he is more knowledgeable and comfortable in a court setting. Participants emphasized that the system should take into account how many women had partners who have returned to life in the South and have abandoned their children in the North. In some cases, children have been relocated to the South, making it difficult for the parent in the North to spend time with them (airfares to and from the North are expensive). Finally, many information booklets are not printed in Inuktitut and are often not relevant to northern women.

Culture

The Métis, Inuit and First Nations are Canada's Aboriginal people. Each group or First Nation within these broader categories has distinct cultural characteristics and lifestyles. Workshop participants generally agreed that the cultural perspective is the key factor in determining custody and access. They also repeatedly emphasized the importance of maintaining culture and language.

Participants discussed the differences between the South and the North in response to a statement that divorce statistics in the South have no relevance in the North. The cultural divide separates Natives from non-Natives. The Aboriginal way of raising children is based on patience, love, communication and teaching responsibility. Moreover, children have a right to the cultural heritage of both parents. Because children who leave or are removed from the Aboriginal community lose contact with their culture, it is difficult for them to reintegrate with the other parent living in the Aboriginal community. For example, a child taken away from his or her mother loses vital nurturing time. Participants also placed importance on the need for children to eat traditional foods.

Participants suggested that cultural and heritage programs need to be developed for children both on and off reserve, and especially for Aboriginal children living in urban areas.

Extended Family

The significance of the Aboriginal family in the nurturing and development of Aboriginal children was a central part of the discussion. Participants explained that it is important for children to maintain relations with the extended family. There is a need to establish what rights and obligations the extended family has, and to ensure that grandparents have access.

Participants said that ways should be found to help heal parents who have been denied access to their children, and to help them cope with the long-term impact of the parent-child separation. In addition, participants pointed out that there is a significant impact when family members are forced to call on services such as the Children's Aid Society (CAS).

Participants said that parents who miss time with their children should be able to make it up. One participant noted that when a child is reintegrated with his or her birth mother after living in a non-Native home, the child has often internalized racist attitudes about Aboriginal culture.

Government and Services

Participants criticized the federal government for not allowing First Nations to be self-sustaining in terms of health and resource issues. The current federal and provincial systems lack an integrated approach to improving support services for Aboriginal children and parents going through a separation or divorce. Participants suggested that governments should focus more on the important preventive factors of health, education and keeping the family together as a unit. Participants expressed specific concern about the lack of services for Aboriginal people. Although there are Native family services in urban areas, the onus is generally on Aboriginal people to organize their own services, with no financial support. Also, current services, such as the CAS and the court system, were described as extremely intimidating environments. One participant described the court system as a church with the judge (in a robe) sitting on high.

Participants agreed that the system must develop a more "people-friendly" approach to the legal process, involve elders more and use traditional knowledge as an alternative to the courts. Participants felt that Aboriginal people should have the opportunity to choose the appropriate service for them.

HOW CAN THESE ISSUES BE APPROPRIATELY ADDRESSED?

Participants generally agreed that the *Divorce Act* should be reformed to meet all peoples' needs. The current system was described as incomprehensible and advocating "foreign ways." Any documentation produced must be clear and comprehensive, and address the issues of all Aboriginal cultures in their respective languages. There should be more focus on the Aboriginal perspective and on the family as a "whole."

New support guidelines should be developed to address various circumstances, including the obligations the Crown already has. Participants expressed concern about whether the support guidelines relieve the federal government of treaty obligations when custody is given to a non-Native parent. Are the obligations of the Crown being integrated into the support guidelines?

Participants also inquired about what calculations the federal government used to establish guidelines for child support for Aboriginal people.

CHANGES TO SERVICES

First Nations families should be more involved in victims' rights and support programs, and there should be adequate support services on reserves. Participants agreed that services must recognize the needs of various cultures and peoples, and suggested that standards and legislation be implemented to compel the courts and legal system to acknowledge cross-cultural differences. In regard to the extended family, it was explained that access and federal jurisdiction varies from region to region and there is a need for laws to be consistent across the country.

Participants proposed changes to the custody process, specifically for the CAS to become more educated about and aware of Aboriginal culture and traditions. A participant explained that members of First Nations always have to prove themselves to CAS and strive to get recognition from the courts, since there is a lack of respect for Aboriginal people in the legal system. Aboriginal women are sometimes more afraid of the CAS than of their abuser, and are hesitant to leave the abuser for fear of losing their children. A participant suggested using elders and the community to rehabilitate people, so the children would not have to be removed from home. In addition, participants said that Aboriginal knowledge should be integrated into the legal system. There is a need for expert representation of the Aboriginal perspective within the family law system. A suggestion was made to have representation specifically from band councils.

Education and Training

Lawyers, judges and other officials should be more culturally aware and sensitive. Participants specifically mentioned the need for family courts to provide mandatory training in cultural awareness, and the need for more education and sensitivity training for frontline service workers. Also, while many social workers are well informed about Aboriginal issues, there is a shortage of Aboriginal foster homes. More support is needed, too, from governments and band councils for child protection and other community services.

Awareness of Services

Participants expressed a need for education and information services beyond the Internet, since it is not a practical resource for all people. Aboriginal communities do not have access to many current sources of information and services. Participants suggested that information should be available in all languages and in all communities in the form of pamphlets and posters. Increased awareness of Aboriginal cultures could be fostered through more research and communication between Native and non-Native people. Participants suggested that a cultural awareness workshop be held in each community to reinforce Native traditions, with specific emphasis on the importance of oral tradition.

Prevention

Participants suggested that early preventive measures be included in a culturally appropriate educational curriculum. Schools must address the issue of violence, and make support services available for children and parents.

Accessibility

Some Aboriginal people do choose to use the legal system rather than the traditional way of settling separation and divorce issues. They find, though, that the timing and deadlines of the process do not recognize the inaccessibility of legal aid and support services in many Aboriginal communities.

Community

Participants placed significant emphasis on the need for governments to develop an infrastructure that focuses on improving community support. The group determined that there is a need for more community support, such as Native foster homes, Native support services (in particular, for parents who are experiencing separation or divorce) and open homes within the community.

In regard to family violence, participants expressed concern about the current rate of violence and child neglect in First Nations communities. Participants said that people are often afraid to report situations in which violence is suspected or witnessed because they fear being called "troublemakers."

Elders

Participants recommended that service professionals (such as social workers and psychologists) draw on elders to help in the divorce process. It must be recognized that elders, traditional healers and medicine people are as capable as psychologists and other service providers. Any psychological assessment or therapeutic mediation must involve an elder to ensure that all cultural differences are acknowledged. The National Elders Council is a resource that various federal departments should use. In addition, elders' expertise should be recognized and paid for.

Alternate Solutions

As an alternative to current dispute resolution methods, participants suggested family healing through the use of sweat lodges. It was even suggested that perhaps such a ceremony should be court-ordered in a high conflict situation. Essentially, participants said that the "best practices" from other services, such as circles and healing traditions, should be applied to custody and access issues.

ADDITIONAL COMMENTS

- This consultation needs a more comprehensible discussion guide. The language and wording are too difficult, and the questions need to be restated.
- There is a lack of awareness of the *Divorce Act* and related issues by Aboriginal peoples.
- Aboriginal treaty considerations need to be incorporated into the child custody and access process (i.e. Native status, etc.).
- A positive obligation to recognize and enhance Aboriginal culture and way of life is needed.
- The issues facing Aboriginal people need to be properly addressed.
- The terms *custody* and *access* should be eliminated as they have a negative effect on members of the community.
- Aboriginal people should have more substantial involvement in changing the divorce process and more inclusion and adequate representation on the committee doing this work.
- Aboriginals need their own internal consultation on these issues. The current consultation was too fast and the background information was provided too late.
- Existing Aboriginal governments need to be recognized.
- Laws and governments must speak directly to the Aboriginal people.
- No action has taken place since the Royal Commission on Aboriginal Peoples.
- Aboriginal people need to be involved in providing input into the system.
- People should have a choice between the "Western" system and the traditional ways.

Table 1: Organizations at the Aboriginal Workshop

Algonquins of Pikwakanagan First Nation
Assembly of First Nations, Gender Equality and Equity Secretariat
Canadian Heritage, Aboriginal People's Program
Congress of Aboriginal People
Kitigan Zibi Anishnabeg, Health and Social Services
Métis National Council
Mohawks of Kanesatake, Social Services
Native Women's Association of Canada
Odawa Friendship Centre, Family Support Services
Odawa Friendship Centre, Pre-post Natal Program
Pauktuutit (Inuit Women's Association of Canada)

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APPENDIX C:

Report on Provincial and Territorial Workshops

INTRODUCTION

Workshops on custody and access were held in Calgary on June 20, 2001, and in Edmonton on June 21, 2001. In total, 150 participants were involved in the workshops. A list of participating organizations is provided in Tables 1 and 2. In addition to representatives from the various organizations, a number of community residents attended the workshops.

The topic discussed at the Alberta workshops was the roles and responsibilities of parents.

SUMMARY OF THE DISCUSSIONS

ROLES AND RESPONSIBILITIES OF PARENTS

What factors enable good parenting after separation or divorce?

Participants suggested many factors that enable good parenting after separation or divorce.

Education and Skills Development

Participants believed it is necessary and possible to teach parents communication skills. Strong communication skills may help reduce frustration and limit the conflicts that may occur between parents. Communications skills courses may be ongoing and offered at various stages throughout the process of separation or divorce. At the onset of separation or divorce, a communication course can help parents deal with separation- and divorce-specific concerns.

Participants suggested that parents require more education on the impact that separation and divorce have on children. Parents often assume that children will bounce back once the legal matters of divorce are resolved. Although many adults find their post-divorce lives are much better than their pre-divorce lives, many children find this is not the case. It is important for parents to remember that their actions during their divorce can have long-term consequences for their children's well-being. In addition, parents need to be educated about what to tell their children and what to keep between themselves to promote the children's best interests.

Some participants favoured the idea of teaching individuals parenting skills before they became parents to create a stronger understanding of parental responsibilities. Parenting courses should begin in high schools and cover the basics of parental responsibilities and parenting concerns.

Services are available to help educate parents and children, but these services must be advertised so that people are aware of them. The services that are available, such as alternative dispute resolution, can help parents facing difficult and adversarial situations. Such a service may quickly resolve what might otherwise develop into a high conflict situation. In addition, a service to inform individuals of the roles and responsibilities of each parent early on in the separation or divorce proceedings would reduce potential conflict.

Judges should be educated and better informed about child development, the impact of divorce on children, and various family systems. Judges appear to treat many family units and situations as equal, when they should treat each situation as unique, taking into consideration the children's needs and desires. The limited time a judge has to observe each family makes it difficult for him or her to understand each unique situation.

Counselling

Counselling should be provided because it can increase an individual's self-esteem and help control stress at the outset of family breakdown. Lack of self-esteem and increased stress may be apparent not only in the parents but also in the children. Counselling can facilitate cooperation, improve communication between the parents, and encourage mutual respect. In addition, counselling can assist in controlling anger, encourage anger management, and keep the parents' attention focused on their children's best interests.

Counselling can help parents recognize that although their personal situation is changing, their relationship with their children must stay the same. As new roles and responsibilities for each parent evolve, counselling can help them accept the change and appreciate the new arrangement, thereby creating stability as quickly as possible for the children.

Alternative Dispute Resolution

Many participants believed that mediation was a suitable recommendation. Mediation should occur at the onset of separation or divorce and again after six months to determine whether any conflict has developed in the potential arrangement. Mediation should not be mandatory for a high conflict situation, but should be the first option for the majority of situations.

Equality Between Parents

There should be recognition that each parent has a role to play in the children's lives. Parents should recognize each other as equal in making a valuable contribution to the life of the children. The development of a parenting plan would help each parent see the significance of his or her role. The plan should set out the distribution of time with the children, and encourage the involvement of each parent in decisionmaking when necessary. It is in the best interests of children to spend time with both parents.

Some participants also suggested that parenting arrangements should start with the presumption that parents are equal. These participants suggested that the courts are sometimes gender-biased when determining which parent will receive more responsibility in the parenting arrangement.

Financial Accountability

Financial accountability was acknowledged as a concern. Participants suggested that support should start immediately, in contrast to the current system in which some time is needed to obtain a support order. The children should be provided with a reasonable standard of living, although this is often difficult to measure and control. The custodial parent should manage the child support in a manner that demonstrates accountability for how the children's money is spent. In many cases, spousal support issues are linked with child support issues, and most participants felt these should be separated.

Flexibility

Flexibility is an important factor in enabling good parenting before and after separation or divorce, and very important in finding solutions acceptable to both parents. Inflexible parents will have difficulty developing parenting solutions, leading potentially to high conflict. Flexibility by both parents should be encouraged in any parenting plan.

Minimize Disruption to Children

Children's lives after parental separation or divorce should remain, as much as possible, the same as it was prior to the separation or divorce. Minimizing changes in children's lives results in stability, which is very important for their well-being. It is important to sustain and encourage relationships with family members and friends. Parents should work with the children and counsellors when necessary to foster strong relationships with extended family members. A parenting plan should recognize the importance of ongoing family relationships and minimal disruption to the children's lives. The plan should be consistent, and adherence to the plan should be enforced.

Listen to Children

It is important to listen to children in an informal environment. When children are heard in court, they are under pressure and in an uncomfortable situation. There should be a child advocate of some kind to represent children. Children will feel more comfortable and able to express their emotions and desires speaking with a third party in a non-court environment. A child advocate should be able to determine whether a child requires counselling, and then help the child get the advice and services he or she needs. The onus should not be on the parents to seek counselling for their children. Children may find it useful to speak with other children, and a child advocate could introduce them to other children who have had similar experiences. These children need a comfortable and accessible place where they can meet to discuss matters of concern.

Follow-up

Another factor that would enable good parenting after separation or divorce is a follow-up program to ensure that the parenting plan is working, communication is amicable, and the best interests of the children are being met. Additional counselling or mediation could be recommended when problems exist that have not been ironed out. It should not be the parent's responsibility to seek this follow-up program or evaluation of the situation. Rather, the follow-up program should be controlled by counsellors or mediators, but not by judges. When a problem is ongoing, then the impact of this situation on the children must be addressed.

When the problem is that a court order is not being followed, then an enforcement procedure must be initiated. There must be consequences for not following court orders.

Separate Parent Issues From Child Issues

It is the role of parents to keep the issues between them separate from issues that affect the children. It is best for children not to become involved in parental disputes. From the onset of the separation or divorce, children may often feel that the conflicts occurred because of something they did. Keeping children separate and not the centre of disputes will lessen the stress on the children.

Issues and concerns relating to child support are a common point of discussion between parents. Children should not become involved in any financial discussions and should not be asked how the other parent is using the money.

Concrete Support System

The development of a concrete support system at the time of separation or divorce would help parents focus on the parenting plan and the best interests of the children. Such a support system could include formal support, such as regular counselling and community services (for example, self-help groups), and informal support, such as that provided by neutral friends or family. Support should be provided as early as possible. The services available in a community should be advertised so people are aware of them and know where to find them.

Timeliness

The timeliness of the process is important to children. Provision of services and support should occur early. Parents should understand the process so that their expectations are not unrealistic. Court proceedings should not be the first step of the divorce process; rather, they should be the last, after all other services have been exhausted. There should be early intervention and support provided to the parents so they can limit conflict and resolve the matter as soon as possible. One suggestion for improving the timeliness of service provision is a 24-hour hotline that parents can phone to seek advice in a timely manner.

Cultural Sensitivity

Another factor parents considered significant to good parenting after separation or divorce was recognizing specific cultural sensitivities. There are often very few culturally sensitive services in communities, and the lack of multicultural services creates obstacles for some parents who are trying to separate or divorce.

Would the use of terms other than *custody* and *access* make a difference in the way post-separation parenting arrangements are determined?

The majority of participants' comments on the continued use of the terms *custody* and *access* were negative. Participants said that these terms do the following:

- suggest ownership of the children by the custodial parent;
- treat children as commodities or pawns;
- do not reflect parenting responsibilities;

- set up a power struggle, which creates dominant and subservient roles;
- prohibit flexibility;
- do not define what parenting is;
- create adversaries, making custody the goal;
- encourage the non-custodial parent to abdicate responsibilities;
- create an overall bad feeling;
- are emotionally charged;
- ignore the rights of the children to maintain relationships with both parents;
- create an imbalance in parental responsibilities;
- promote unilateral decisionmaking; and
- restrict the access parent from participating in decisionmaking and the ongoing parenting of the children.

All of these comments suggest that the current terminology focuses on the rights of the parents rather than on the needs of the children.

Other participants supported maintaining the current terms, suggesting that changing the terminology would not make a difference. The current terms are widely recognized and would continue to be used in everyday language anyway because they are understood.

What are the advantages and disadvantages of the proposed terminology options?

Option 1

Keep the current legislative terminology.

Some participants believed that there were advantages to keeping the current terminology. It is plain language that is understood throughout society and the legal system. Redefining the words would cause confusion without removing the problematic connotations of the definitions. The definitions could be refined to focus on the children's interests and rights. They are flexible terms that can be adapted to individual parenting arrangements. For some participants, there is a clear definition for the terms. With this option, access would continue to be described as a right of parenting, and custody as the responsibilities of parenting.

Option 1 would be more workable if information were provided to parents to explain the various types of parental arrangements, so that parents take less offence at the parental responsibilities assigned. Parents must realize that if they could cooperate they could create their own parenting plan and use their preferred terminology to explain the parenting roles and responsibilities of both parents, thus eliminating the terms *custody* and *access*.

Participants suggested many disadvantages to keeping the current terminology. They said there is too much history and too many negative connotations attached to the terms. It was suggested that the words cannot foster a change in attitude, and that they create adversaries and a win-lose or all-or-nothing division of power, which precipitates power struggles between the parents. The terminology is not considered flexible enough for all parental situations. It is not a plain language definition because the terms are used in so many situations to imply different arrangements. The terminology does not focus enough on the possibility of equal responsibilities and a co-parenting arrangement, which some feel would be best for the children.

As stated earlier, some participants said that the terms are not in the best interests of the children because they imply ownership of the children by the custodial parent.

In regard to option 1, participants suggested that the terminology must reflect the importance of the involvement of parents, extended family and the community in children's lives. Some participants said that the *Divorce Act* should affirm that, in most situations, parents are equal in theory and thus equally suitable as parents. The following were additional comments regarding option 1:

- it should reflect the children's need for supportive relationships with appropriate adults;
- it should reflect children as human beings, not property;
- it should promote a reduction of sexism in custody decisions;
- it should communicate the responsibility of parents to nurture the children's relationship with the other parent and extended family; and
- it is not workable.

Option 2
Clarify the current legislative terminology: define custody broadly.

Some participants said that maintaining the existing terms, but defining them differently, might create a broad definition that would be more acceptable. The new broad definition would be more flexible and able to accommodate unique parental situations. It was suggested that the new definition must also include a description of parental responsibilities (similar to option 3) and the possible roles of parents. This would allow each parent to define his or her contribution to the welfare of the children if so desired. In addition, parents should have the opportunity to submit a list of responsibilities that they are willing to assume.

Some participants said that the broad definition of custody would be too ambiguous. They felt that such a definition would continue to trigger power struggles between parents, create adversarial situations and imply ownership of the children. The broad terminology proposed in option 2 does not highlight the fact that each parent has a significant ongoing role in the children's lives. Participants questioned the wisdom of eliminating the simplicity of the terms *custody* and *access*, only to replace them with the complexity of new wording.

Participants made the following additional comments about option 2:

- The language needs to change.
- The parents' role must be clearly defined no matter what the terminology.
- If the language were redefined, people would be confused and continue to attribute the old connotations to the new terms.
- There should be flexibility in the terminology suggested.
- The word *custody* should be broken down further into *custody* and *additional custody*, reserving the term *access* for situations when a parent is unfit to have additional custody (e.g. in family violence situations).

Option 3
Clarify the current legislative terminology: define custody narrowly and introduce the new term and concept of *parental responsibility*.

Some participants suggested that introducing the new term *parental responsibility* would create a built-in flexibility, allow parents the right to develop their own language to describe their parenting arrangement, and move away from a focus on parental rights. Participants said that putting emphasis on parental responsibility prevents children from having to choose one primary parent. This encourages parents to divide parenting time and parenting responsibilities among themselves, in line with their particular situation. These participants said they believed this option would be successful in both consensual and disputed situations.

Some participants believed that option 3 would be acceptable in the following circumstances:

- if there were an education process for parents explaining parental responsibilities and the importance of parenting plans;
- if there were annotated examples of successful parenting plans; and
- if parents cooperated in creating a parenting plan and recognized distinct parental responsibilities.

In contrast, participants said that the narrowly defined term *custody* would still portray ownership, imply imbalance and denote a winner and a loser. This negative word is not necessary to define the children's residence and should be removed from the legislative terminology. The concept of custody can be incorporated into the term *parental responsibility*.

Furthermore, the term *parental responsibility* would not be useful if the parents were not agreeable, and it would create conflict and disagreement about what would be best for the children. Some participants said that keeping the word *custody* in the terminology denotes a primary home for the children and that the parents do not share the responsibilities for the children. These participants said that children ultimately need one primary caregiver to create stability. Some participants said that option 3 would not be workable when distance was a factor, because sharing parenting responsibilities would be difficult when the parents live in different parts of the country.

Participants provided additional comments on option 3:

- Familiarizing parents with these words would make them non-threatening; therefore they must be clearly defined.
- Parents and children should have the same understanding of the responsibilities.
- A practical understanding of the consequences of assigning parenting responsibilities must be provided.
- Equal responsibilities should be an option, depending on the circumstances.
- Children should be involved in the decisionmaking.
- More support is needed regardless of the terminology suggested.

Option 4
Replace the current legislative terminology: introduce the new term and concept of *parental responsibility*.

Participants identified many advantages of this option. Some said that adopting this terminology in the legislation would not require parenting responsibility to be divided equally. They felt it focuses on the responsibilities of parents as opposed to the rights of parents, and by removing the words *custody* and *access*, removes all their negative connotations. This option would encourage mediation as an effective means of developing a parenting plan and encourage communication between parents. It would minimize the amount of contact required in high conflict situations, and thus work for both consensual and disputed cases.

It was suggested by some that parental responsibility and parenting plans would allow responsibilities to be allocated on the basis of the best interests of the child and encourage parents to divide parental responsibility between them, using the court as a last resort. Parental responsibility empowers both parents in their roles, encourages flexibility, recognizes different parenting styles, and has the capacity for growth and change.

Furthermore, some participants said that parental responsibility does not require responsibilities to be equal, considers the responsibilities and not the rights of parents, adequately addresses situations in which parents do not want to be considered equal, and relieves parents of their responsibility to cooperate because it is in the best interests of the children.

The participants opposed to option 4 suggested some disadvantages. It was suggested that additional pressure would be placed on the courts in assigning responsibilities and determining what is best for the children, thus making the process slow and difficult in complicated situations and putting too much pressure on judges. Also, the introduction of new terminology would create confusion, require all parents to be educated about the terminology, and only replace old terminology with something just as difficult to understand.

Some participants argued that the concept of parental responsibility and the need to create a parenting plan rely too much on parents formulating an agreement, do not encourage cooperation and may create exclusive responsibilities that are not workable.

In addition to the advantages and disadvantages of replacing the current terminology and introducing the new term *parental responsibility* discussed above, participants suggested the following:

- Placing responsibility on judges and courts should be a last resort.
- If some parental responsibilities were not discussed or included in the arrangement, conflicts would be created when they do arise.
- Judges should have lists, models and definitions to help them make decisions.
- There is the need for affordable, workable, accessible and prompt recourse to ensure compliance with parental responsibility orders.

Option 5

Replace the current legislative terminology: introduce the new term and concept of *shared parenting*.

Some participants suggested many advantages to replacing the current terminology and introducing the term and concept of *shared parenting*. These participants said that the term *shared parenting* reinforces the responsibility of parents. When desirable, it allows one parent to be more responsible than the other, but under most circumstances would not allow one parent to have total control over the children. The concept of shared parenting provides parents with ownership of the parenting process, which would increase the chances of successful post-divorce parenting. The parents could create a framework that would allow them both to determine the scope and nature of their parental responsibilities. Shared parenting also provides flexibility for the future, and encourages ongoing collaboration.

The concept of shared parenting recognizes that children are not property, allows both parents to make decisions about their children's lives, and enables the children to have regular interaction with both parents and access to the extended family.

Some participants identified disadvantages to replacing the current terminology and introducing the term and concept of *shared parenting*. Some said that the term *shared parenting* was not workable because it creates unrealistic assumptions. Moreover, in some situations, the extensive interaction between parents that it requires is not possible. Shared parenting cannot be mandated by law when parents do not wish to participate in parenting, and it will not work when both parents do not participate. Other disadvantages are that this concept does not emphasize children's rights, and that not all aspects of parenting can or should be shared.

In addition to the advantages and disadvantages of replacing the current terminology and introducing the term and concept of *shared parenting* mentioned above, participants suggested the following:

- There should be screening for family violence.
- The terminology should be more positively worded.
- Shared parenting does not necessarily mean equal parenting or equal residence.
- The term should include the concept of equal shared parenting or shared and equal parenting.
- The definition should include what is not in the best interests of the child.
- Counselling should be accessible, and the children's needs should be considered.
- Models should be prepared that parents can choose and build upon.

Table 1: Organizations Represented at the Calgary Workshop

Association of Collaborative Family Lawyers
Balbi and Company
Blake, Cassels & Graydon
Calgary Legal Guidance
Calgary Police Service
Canadian Bar Association, Family Law Section
Canadian Grandparents Rights Association
CARP (formerly the Canadian Association of Retired Persons)
Community Strategies
Duncan & Craig
Faber Gurevitch Bickman
FAIR Society
Family and Community Support Services
Family Law Information Centre
Family Mediation Services
Family of Men Support Society
Fong, Ailon & Norrie
Foster, Wise & Walden
Gaetano & Associates
Impacts Consulting Ltd.
Law Society of Alberta
McConnell, MacInnes, Graham
MESA (Men's Educational Support Association)
Mid Sun (Calgary) Youth Justice Committee
Miywasin Justice Program
Murray Silver Counselling Ltd.
University of Calgary
Van, Harten, O'Gorman, Foster
Women Looking Forward
Youth Criminal Defence Office

Table 2: Organizations Represented at the Edmonton Workshop

Alberta Children's Services
Aboriginal Consulting Services
AHRE, Central Region
Alberta Civil Trial Lawyers Association
Alberta Council of Women's Shelters
Alberta Council on Aging
Alberta Hospital
Alberta Law Reform Institute
Alexander Youth Justice Committee
Broda & Co.
City of Spruce Grove
Correctional Services Division
Court of Queen's Bench
Edmonton Local Council of Women
Edmonton Social Planning Council
Edmonton Women's Shelter Ltd.
Embury McFayden & Wilson
Enoch Youth Justice Committee
Equitable Child Maintenance and Access Society
Family and Youth Court
Family Law Information Centre
Family Mediation Services
Grandparents Unlimited
High Prairie Youth Justice Committee
Human Resources and Employment
Jiwaji Law Office
Kochee Men Young
Leduc County of Family and Community Services
M.E.R.G.E. (Movement for the Establishment of Real Gender Equality)

Table 2: Organizations Represented at the Edmonton Workshop (cont'd)

Maintenance Enforcement
Martinez Meunier Scholter
Men's Education Network
Morinville Youth Justice Committee
Native Counselling Services of Alberta
Orphaned Grandparents Association
Poverty in Action
Sexual Assault Centre of Edmonton
Special Education, Edmonton School Board
Strategic Initiatives
Strathcona County Family
Town of Barrhead
Town of Bon Accord
Town of Bonnyville
Town of Vulcan
University of Alberta
West Yellowhead Child and Family Services
West Yellowhead Law Office
Women's Law Forum

INTRODUCTION

Six workshops were held in British Columbia on custody and access: in Vancouver on June 4, 2001, New Westminster on June 5, 2001, Abbotsford on June 6, 2001, Prince George on June 11, 2001, Kelowna on June 12, 2001, and Victoria on June 13, 2001. Approximately 97 participants attended the workshops. Table 1 lists the participating organizations.

The following topics were discussed at the British Columbia workshops:

- roles and responsibilities of parents;
- family violence; and
- meeting access responsibilities.

SUMMARY OF THE DISCUSSIONS

ROLES AND RESPONSIBILITIES OF PARENTS

What factors enable good parenting after separation and divorce?

The participants generally agreed that the roles and responsibilities of parents are to provide love, support, security and safety for children. Separated parents have the same responsibilities as they did when the family was intact. However, they might meet these responsibilities in a different way. Most people felt that both parents need to play a substantial role in the growth, development and support of their children.

Clear Definitions

For parents to fulfil their roles and responsibilities, they need to define and agree on their respective roles from the outset of the separation and divorce. Participants suggested that the terminology and range of responsibilities used in parenting plans must be clearly defined in legislation.

Safety

The climate should be one of "no fear" for the children or caregivers. The safety of the children from any form of violence should be the overriding priority.

Training

Participants suggested that training is necessary for parents to learn how to recognize children's basic needs and to develop stronger parenting skills. Parents should have pre-marriage courses describing the roles and responsibilities of effective parents. The courses should emphasize communication skills, cooperation and anger management. In addition, courses should be available for separating parents during transition stages in their relationship.

Cooperation

Parents must recognize that cooperation is necessary if they are to focus on the best interests of their children. Cooperation should be encouraged while creating a parenting plan, which will allow each parent to understand and value the contributions both parents make to the children and their importance in the children's lives.

Recognizing the Children's Needs

Parents must recognize the needs of their children and always consider the potential impact of their actions on the children's welfare. Workshop participants made many suggestions about what is important for children. The children's best interests depend on many things:

- parents putting their emotions aside and considering the children;
- children having the support of extended family members;
- stability in the children's lives;
- open communication between parents and children;
- no presence of fear;
- an absence of anger in the relationships; and
- children feeling accepted by both parents.

What suggestions do you have for improving awareness of the services?

Participants made many suggestions for improving awareness of services and the types of services provided. Participants suggested offering awareness programs through work and schools, so information would be readily available, and producing advertisements and videos about the available services. It was suggested that advertisements be placed in central locations, such as supermarkets and community centres. The advertisements, videos and pamphlets must reflect cultural variations and sensitivities. In addition, professionals, such as doctors, lawyers and teachers, must be familiar with all available services so that they can help people seeking advice.

Participants suggested that services be expanded to include a full range of programs for men, women, children and extended families.

How could these services be made more helpful to parents?

Participants had many suggestions for making services more helpful to parents who are trying to agree on how they will care for their children after their separation or divorce. Participants strongly suggested the need for more education and improved services for parents focusing on children's needs.

Services and Supports Needed

Participants noted that considerable support is needed for both separating and divorcing parents and for children. Concern was voiced about the role and operation of the current adversarial court system, which seems to focus on parents' rights rather than their obligations to their children.

Many participants noted that some services are available but are not well known or advertised. Participants also said that these services are quite fragmented, with no particular way to find out what services exist and how to access them. Several participants stressed the lack of services for men, who could benefit from counselling and other transition assistance during the separation process.

Others pointed out the need for materials and information to be in simple language, and for services tailored to various cultures and languages. Participants considered legal aid and family law drop-in centres to be helpful but in need of expansion.

Education

Some participants said that the schools should offer courses that deal with parenting. It was felt that classes on how to build healthy families, how to communicate and how to resolve disputes would provide long-term benefit. One participant noted that each dollar spent on prevention saves multiple dollars in intervention during a family break-up.

Courses on parenting after separation should be mandatory for both parents. These would ensure that parents understand and acknowledge the interests of their children. Participants argued that when parents end up going to court as a result of a family break-up, formal reports and assessments should be made available to judges to help them determine what kind of relationship would be in the best interests of the children.

Mediation

Some participants suggested that mediation should be mandatory for all separating or divorcing parents. Other participants said it should remain optional, and that a professional or the parents should decide whether the service would be helpful in each unique situation. Strong emphasis was placed on creating parenting plans that are based on the children's needs.

Improving Services

The participants also made the following suggestions for improving services;

- The federal and provincial court systems are in competition, and so more consistency and communication between the levels of government would be helpful.
- Family justice counsellors need to be more readily available to assist.
- Services must be geared to men, women and children.

- Services must be sensitive to cultural differences and recognize all languages that may be required.
- Legislation must be comprehensive and easy for all individuals to follow.
- Early intervention services should be available.
- Services must provide information on alternatives to the courts (for example, mediation).
- Initial assessments and mandatory reassessments are required to determine that the children's best interests are the main concern.
- Early detection of family violence situations should occur.
- There should be specialized family court judges who are very familiar with the legislative and non-legislative options.
- There should be a place to provide a comprehensive, multidisciplinary assessment of high conflict situations.
- There should be a safe place for children to voice their opinions.
- There should be a child advocate to speak for children.
- There should be more resource centres that can provide a safe place, support and advice.

Would terms other than *custody* and *access* make a difference in the way post-separation parenting arrangements are determined?

Many participants said that the words *custody* and *access* exacerbate the tensions occurring during a separation or divorce and emphasize the winner-loser nature of the situation. The vast majority of participants felt that these terms were no longer appropriate and should be replaced with a more neutral term such as *parental responsibility*. This new wording would shift emphasis from the interests of parents to their responsibilities to look after the interests of their children. Some participants said that in the absence of physical danger or violence, the concept of shared parenting offers the best opportunity for parents to work out a parenting plan in the interests of their children. Most of these participants represented fathers' organizations. Others participants said that it was important for parenting roles to focus on caregiving and guardianship, recognizing that over time the roles and responsibilities of the parents will change in response to the changing needs of the children.

Many participants commented that parents should use the court system only as a last resort, and that legislation should require parents to attend mediation or other alternative dispute resolution programs to work out a parenting plan in the best interests of their children before taking their case to court.

Participants made the following specific comments on the proposed terminology options.

Option 1
Keep the current legislative terminology.

Many participants said that the current terminology must be changed because the word *custody* denotes ownership and the term *access* denotes visitation. Others said that if definitions of these terms were to be changed, they would have to be narrowed so that people could understand and agree on what they mean; therefore, terminology should not be changed until definitions and concepts are agreed upon.

Option 2
Clarify the current legislative terminology: define *custody* broadly.

Some participants said that this option adequately covered many parenting situations. Clarifying the current terminology would reduce some confusion, and by defining *custody* broadly, this option reduces some of the win-lose characteristics previously associated with this term.

Option 3
Clarify the current legislative terminology: define *custody* narrowly and introduce the new term and concept of *parental responsibility*.

Some participants said that option 3 would be best. They suggested that the term *guardianship* be introduced. The differences between guardianship and custody could be defined, and the term *access* reserved for when a parent's rights have been reduced because of violent or offensive behaviour.

Option 4
Replace the current legislative terminology: introduce the new term and concept of *parental responsibility*.

Some participants preferred option 4, giving the following reasons:

- It allows for shared decisionmaking.
- It uses the term *parental responsibility*, which reflects the responsibilities of the parents to their children.
- It allows for flexibility to address unique situations.
- It recognizes the importance of parenting responsibilities as opposed to parents' rights.
- It allows for parents to be accountable for their actions or lack thereof.

Participants also suggested that the term *parental responsibility* should replace the term *access* and that *primary residence* should replace *custody*.

Option 5
Replace the current legislative terminology: introduce the new term and concept of *shared parenting*.

Some participants preferred option 5. They said that shared parenting and joint custody should be presumed unless there is reason to believe that one parent is less suitable than the other. The concept of shared parenting allows the presumption of equal parenting. Mandatory mediation could be encouraged with the goal of creating a parenting plan. Participants also suggested that there should be special magistrates or judges who take a child-centred and gender-neutral approach when deciding on outstanding issues or proposed changes to the parenting plan.

Other participants said that *shared parenting* is an unrealistic term that would cause parents to insist on equal parenting roles even in high conflict situations.

Additional Comments on Terminology in the Legislation

Participants made the following additional comments:

- Both parents need the opportunity to love, rear and nurture their children.
- Denial of access is a form of irresponsibility.
- Relationships should be carefully examined and family situations assessed before determining the custody order.
- Interim agreements should be developed as soon as possible and modified when situations are resolved.
- Judges' discretion should be limited.
- The safety of women, children and men must be ensured.
- Children's relationships with their extended family should be protected and encouraged.
- There must be continuity in the services offered by the provinces and territories.
- The court system should be a last resort.
- Mediation should not be required when violence is an issue or possibility.
- All situations are unique so legislation must be flexible.

What are children's needs when their parent's separate?

Participants noted that children need emotional support and circumstances in which they feel secure so they can retain or build their self-esteem. Several participants also commented that children do not currently have a voice in the separation process and said that, when possible, those interested should be able to express their needs and expectations.

Many participants raised the point that children should not be pawns in the separation or divorce. Furthermore, children should not be put in the position of having to manage communication between the two parents. Significant effort should go into developing a parenting plan that will give children stability, consistency and predictability.

Parenting Time

Most participants agreed that children's best interests are served when they have sufficient parenting time with both parents. One parent should not alienate the children from the other. The focus should be instead on parental responsibility and ensuring that both parents have equal access or as much access as is possible through the system. This is understood to refer to situations in which there is no clear evidence of danger or violence.

Some participants from men's groups said that the best interests of children would be met by implementing the 48 recommendations of the Special Joint Committee on Child Custody and Access.

FAMILY VIOLENCE

In the discussion on family violence, almost all participants agreed that demonstrated physical violence and the continued threat of such violence should not be tolerated, and should be a factor in decisions about the best interests of children. However, there was not full agreement on what other forms of violence, besides physical violence, should be considered when making these decisions. Some participants questioned whether there was a workable definition of family violence, and whether it should include emotional and mental abuse. It was said that any physical violence should clearly not be tolerated, but that dealing with the more subtle forms of violence between parents is more difficult.

Participants also noted that violence is not a gender issue, and that there are various types and levels of violence. Some participants said that violence involves issues of power and influence. Some noted that some divorce proceedings have to deal with false allegations, and that these are a form of violence intended to alienate children from a parent. Others noted that there are no easy answers to this emotionally complex question, and that there can be high levels of conflict without physical violence.

Services and Supports Needed

To deal with the effect of family violence, participants said that there needed to be considerable education and services for parents and children. Many participants said that there should be education for professionals in the legal system as well, so that they can better understand what happens to children who witness abuse and experience post-traumatic stress.

Most participants said that judges need to take family violence into account when making decisions, but also that the role of the courts should be minimized and that solutions in the best interests of children be worked out through alternative dispute resolution mechanisms. Others added that not only should judges be trained to understand the nature and effects of abuse and to take family violence into account, but also that evaluation tools should be developed focusing on the potential for recurring offences.

Several participants noted the difficulty in setting out a standard method for assessing violence because of the different circumstances in each family, which must be assessed case-by-case to make an appropriate judgment.

There were suggestions that family court judges should also be aware of any criminal charges, and that these must be considered in the overall determination of the best interests of children. Child advocates should also play a significant role in ensuring that the best interests of children are taken into account.

Participants agreed that mediation is an appropriate mechanism to deal with divorce and separation provided that no violence, intimidation or harassment has been a part of the post-divorce relationship. If there were, it would be necessary to develop a parenting plan with input from the court.

MEETING ACCESS RESPONSIBILITIES

The discussion on access in the best interests of children identified three problem areas:

- not using or living up to access opportunities and responsibilities;
- wanting more access and not being able to obtain it; and
- withholding access.

Some participants argued strongly that the word *access* should be eliminated and that the importance of both parents to children's well-being be reinforced. Others noted that the word *access* implies visitor rather than parent and, therefore, *parental responsibility* should replace *custody* and *access*. Many pointed out that a parenting plan is needed. These plans may vary with the ages of the children and their particular circumstances, but should always include an agreement about roles and responsibilities based on the principles of shared parenting.

Supervised Access and Resource Centres

Some participants said that there should be many more structured opportunities for supervised access, since often there is no formal, neutral place where children can meet with the non-custodial parent. This is particularly important when violence is a concern. Others noted that children need to have safe and healthy access to both parents, and that this requires support for non-custodial parents in the form of parenting courses so that they can understand their changing roles and relationships and the responsibilities that they have to carry out.

Several participants made reference to the Alberta model, which they described in positive terms for how it deals with parenting responsibilities. Still others noted that courts should not make access orders that are inconsistent with emergency protection orders and issues emerging out of the criminal court system. The safety of children, their supervisors and the custodial parent is paramount.

Interests of the Children

Participants noted the importance of recognizing the entitlement of children to the parents' time. Developing parenting plans that acknowledge this entitlement is critical, and doing so through alternative dispute resolution mechanisms is preferable. Some participants said that access is not the right of the parents; rather, it is the right of the children. A mandatory parenting plan, such as is required in the State of Washington, should also be considered.

With respect to access after separation and divorce, many participants noted the importance of extended family: not only parents should have access, but also grandparents, siblings and other relatives. As well, children should have a say in the access relationship—when they want to see or need to see their parents.

Parenting Plan

Many participants supported the concept of a parenting plan, particularly a plan that does not involve going to court. Developing such a plan would be less expensive than going to court, and potentially would reduce the acrimony that frequently intensifies during the court process. The parenting plan should be flexible so that it can be modified as conditions change and as the children develop and grow. This flexible system should be reviewed regularly, possibly every two or three years, and on request of the children or either parent.

Some participants noted that the court system is really a blunt instrument that is not designed for family problems or conflicts. An alternative approach might be "special masters," individuals who can deal with family issues but practise outside the court. Participants also said that separating and divorcing parents often have their own psychological and emotional problems that need to be addressed through responsive services, training and orientation courses.

Participants said that when a non-custodial parent does not follow through on access, this should be considered a form of child abuse. Non-compliance by custodial parents should also be censured. Both of these circumstances could or should lead to a change in the custodial order.

Some participants said that access agreements are not systematically or fairly applied. Maintenance orders seem to be enforced, but access orders are not. Some participants noted that access has to do with interpersonal and psychological relationships and should not be tied to maintenance.

There was considerable agreement that both parents need to be accountable for meeting their access and/or parenting responsibilities. The court system may have to develop a plan for access and enforce it in high conflict situations, which include violence and abuse. Some participants argued that the parents should draw up the plan before the separation or divorce is finalized. Others noted that seeing a family justice counsellor when developing such a plan should be mandatory. Generally, there was considerable support for the concept of a parenting plan and parenting responsibilities rather than custody and access.

Table 1: Organizations Represented at the British Columbia Workshops

Abbotsford Community Legal Services Society
Abbotsford Women's Support Services
Ann Davis Transition Society
Barrister and Solicitor (2)
Battered Women's Support Services
B.C. Association of Clinical Counsellors
B.C. Association of Social Workers, Child and Family Therapy
B.C. Association of Social Workers, Okanagan Branch President
B.C. Association of Social Workers, Okanagan Branch Representative
B.C. Men's Resource Centre
B.C./Yukon Society of Transition Houses
Burnaby/New Westminster Family Justice Centre
Cameron Kenney
Canadian Coalition for Parental Rights
Canadian Grandparents Rights Association
Cariboo Friendship Society
Central Okanagan Elizabeth Fry Society
Central Okanagan Emergency Shelter Society
Chetwynd Women's Resource Society
Dewar & Co., Alkali Ranch
Elizabeth Fry Society
East Fraser Family Justice Centre
Equal Parenting Group
Families First Resources Society
Family Education and Support Centre
Family Law Sub-section, Okanagan, Kendall, Penty & Co.
Family Law Sub-section, Vancouver, Canadian Bar Association
Fathers Advocating Children's Equality
Fraserside Community Services, Supervised Access Services
Georgialee A. Lang and Associates
Grandparents Raising Grandchildren
Immigrant and Multicultural Services Society of Prince George
Ishtar Transition House Society
Justice Centre
Kelowna Family Justice Centre
Kelowna Family Services Centre Society
Kids Turn of Greater Vancouver
Law Courts Education Society of B.C.
Legal Services Society
LSS Family Law Clinic
McAfee, Hattori & Shaw

Table 1: Organizations Represented at the British Columbia Workshops (cont'd)

Mission Community Services
Mom's House, Dad's House
Munroe House
Non-Custodial Parents Association
North Okanagan Youth and Family Services Society
Northern/Interior Family
Oakhill Counselling and Mediation Services
Parent and Child Advocacy Coalition
Parents of Broken Families, Kamloops
Penticton and District Community Services Society
Penticton and Area Women's Centre Society
Penticton and District Multicultural Society
Phoenix Transition Society
Port Coquitlam Area Women's Centre
Prince George and District Elizabeth Fry Society
Prince George Native Friendship Centre
Progressive Intercultural Community Services Society
Quesnel Women's Resource Centre
School of Social Work and Family Studies, University of British Columbia
Shazz Training and Counselling
South Surrey White Rock Women's Place
South Vancouver Neighbourhood House
Supervised Access and Access Exchange Program, Elizabeth Fry Society, Kamloops
University of Northern British Columbia
Vancouver and Lower Mainland Multicultural Family Support Services Society
Vancouver Community Mental Health
Vancouver Custody and Access Support and Advocacy
Vancouver Family Justice Centre
Vancouver Rape Relief and Women's Centre
Vernon and District Immigrant Services Society
Westminster Community Law Clinic
Wingham Kinsman Label, Barristers and Solicitors
Women In Action
Xohlmet Transition Society

INTRODUCTION

Workshops on custody and access were held in Flin Flon on June 8, 2001, Brandon on June 12, 2001, Winnipeg on June 14, 2001, and St. Boniface on June 15, 2001. In total, 67 people participated in the workshops. Tables 1 to 4 list the participating organizations.

The following topics were discussed:

- best interests of children;
- roles and responsibilities of parents; and
- family violence.

One women's group boycotted the Brandon consultation. Some of the reasons given for the boycott were that the consultation document and process:

- fail to acknowledge women's realities in marriage, including their vulnerability to violence and poverty, and the highly conflictual nature of many parents' separation from each other;
- do not make a single reference to women;
- provide no gender analysis of the issues; and
- do not recognize the disadvantages of abused women (in physical, psychological and financial terms).

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

What are children's needs when their parents separate?

Safety of Children

The safety of children was most strongly emphasized in all the discussions, with various definitions of what safety actually entails. Some participants suggested that a child's safety refers to his or her whole environment: physical, emotional, psychological and financial. Ensuring basic needs was also mentioned, including adequate housing and medical needs. Other participants stressed that ensuring safety also means keeping children out of the conflict—the arguments and, in some cases, violence—between the parents. Protective measures should be taken whenever a child's safety may be compromised. The question was asked (but not answered) about what kinds of protective measures are appropriate in situations involving allegations of child abuse.

Stability, Consistency, Predictability

The potential for emotional harm to children during separation and divorce was discussed fairly extensively in all sessions. It was noted by many participants that children need as much stability in their lives as possible, and that parents should strive to maintain routines and consistency in their children's lives, both during and after separation. Parents must continue to communicate positively with children about their day-to-day needs, and to respect children's daily activities (for example, their homework and bedtime routine). Maintaining "rules" at both parents' homes is necessary to ensure consistency in the children's daily lives. Planning (e.g. for access) well ahead of time, informing the children of the plan, and sticking to the plan helps give the children a sense of predictability and safety. Maintaining that stability outside the family (in the community, schools and day care) would also contribute to children's well-being.

Parents' Access

Some diverging views emerged about parents' access to children. While some participants said that parents should adhere strictly to the access plan and agreement, others felt that flexibility to change the agreement was important.

Some participants suggested that children need "equal access" to both parents, regardless of financial issues. Others suggested that both parents should commit to staying geographically near to each other, to make access and involvement easier for both parents.

Children Need To Be Children

Much of the discussion concerned the integrity of children: respecting children's lives and views, and ensuring that children do not feel a burden of responsibility for the parents' well-being. These ideas were expressed as follows.

Participants said that both parents must respect their children's interests and activities, in accordance with the children's age and stage of development. Children must have the opportunity to express their own opinions. Some participants felt that if children are old and mature enough they should have a voice in decisions concerning custody and access. Other participants qualified this statement by adding that, while children's opinions should be acknowledged in court decisions, children should be protected from being involved in the legal process.

Participants emphasized that parents must ensure that their children do not feel responsible for the parents' well-being. Children need to be assured that they are not to blame for the break-up. Nor should children be placed in the position of mediator or messenger, and be forced to report back to and from the other parent. As well, children must be allowed to love both parents, without guilt or fear of recrimination. Thus, parents must avoid commenting negatively about the other parent in the presence of the children, and protect them from having to choose between parents. Children should also not have to worry about adult problems, such as money or child support.

Children must feel at liberty to care about any new partners and their extended family, whenever it is safe to do so. Participants pointed out that "the extended family is a part of a child's home." Likewise, it is important to respect sibling relations.

External Support

Participants at all sessions said that for the best interests of children to be met, both parents *and* children need access to social services for support. Access to services that deal with the family's legal and parenting issues and provide information are particularly important in situations of high conflict.

In discussing support mechanisms for parents, participants at one session suggested that measures are needed to discourage parents from engaging in an adversarial process. At the same time, the process needs to be timely and to encourage parents to make decisions as swiftly as possible. Some participants argued that a "standard order" or "default position" should protect against parents' unwillingness to make custody and access decisions. Other participants disagreed with this suggestion, arguing that such a temporary order would establish a status quo in the law, which may be unsafe for some children or parents.

Some participants thought that parent education, counselling and support services to help parents focus on their children's emotional needs should even be mandated or ordered by the judge. Some suggested that, before custody decisions are made, the family situation should be properly assessed to avoid false allegations against one or the other parent.

One participant declared that financial child support must be dealt with immediately and rapidly by the courts.

In terms of external support for children, many participants proposed that children need their own advocate, such as a counsellor, lawyer, social worker or elder, to ensure that their voices are heard. This might also ensure that children's views on time-sharing are properly considered. It was also suggested that children may require supervised access or a mediator to prevent one parent "telling stories" about the other. Participants felt that when children are exposed to high levels of conflict, counselling should be mandatory. Several participants felt that support systems should be established in schools or in familiar community agencies. In contrast, one participant said that children need a sense of security in their homes, too, so they will not be intimidated by social service agencies or be afraid that they will be "taken away."

Participants proposed that the legislation be sensitive to gender issues, disabilities and cultural differences. One participant suggested a children's "bill of rights" that would include provisions for protection, growth, nurturing, wholeness and knowledge of cultural traditions.

Currently, the Federal *Divorce Act* does not specify factors to consider when determining the best interests of children. Should it? If so, what is to be included in the legislation?

Participants' views on these questions ranged from a clear "no" to a clear "yes." Many participants expressed concern about including factors in the *Divorce Act*, and suggested various solutions. Others suggested qualifying the use of such a list of factors, based on certain conditions.

Reasons why the* Divorce Act *should not list factors to consider in determining the best interests of children

- A list would promote a competitive approach between parents and increase conflict. The law should not set parents up to compete rather than to cooperate.
- Unlisted factors might not be taken into consideration.
- A list of factors increases danger of losing the broader perspective of the individual family. Each family should have its own set of factors assessed and have its case judged on its own merits. Advocates should present the family's individual and specific issues.
- With a list of factors comes the problem of deciding how to rate the variables in each family (e.g. cultural and economic differences). Each factor could be scored without full understanding of the child's environment or what is at stake.

Suggestions for approaches other than listing factors to consider in the* Divorce Act, *for determining the best interests of children

- Place emphasis on educating parents, lawyers, judges and other practitioners about children's needs.
- Include more guidelines in the *Divorce Act* to promote more consistency in considering children's needs and abilities. These guidelines could include basic principles for judges to adhere to (as is done in the *Child and Family Services Act*).
- A list of factors could be used in family courts in the form of a general "bill of rights" for children's welfare in any circumstance.
- Explore the best ways to get the message out (e.g. pamphlets).

Reasons why the* Divorce Act *should list factors to consider in determining the best interests of children

- Listing factors would ensure that certain issues are included that might otherwise be neglected (e.g. cultural factors or the role of the extended family or elders).
- Judges need consistency in factors to determine what is best for children. A list of factors would ensure that judges could more consistently address children's needs and abilities.
- Without a list, no one can know for certain what factors the judge is taking into consideration.
- Without a list, there would be no way to ensure that all factors are taken into account.

Factors that should be included, were the* Divorce Act *to list factors in determining the best interests of children

- Financial support and equalization of financial power.
- "Friendly parent" attitude towards access, based on children's needs and ability to cope.
- History of primary care, as well as prior involvement and responsibility for the children.
- Characteristics of the parents' relationship.
- History of the children's relationships.
- Developmental stage of the children (not simply their ages).
- Physical needs.
- Academic needs.
- Cultural and language needs.
- Parent's ability to form and follow through with a plan for the children.
- Cultural factors, including "rootedness" (the sense of belonging in the home and community).

Qualifying conditions for including a list of factors in the* Divorce Act *for determining the best interests of children

- The list of factors should not be exhaustive. Judges must be allowed a certain degree of discretion.
- Any list should reflect the complexity of factors in individual cases.
- Children's needs should be separated from property and "adult" issues.
- Factors should reflect the opinions and input of social service experts in determining children's best interests.
- It should not be presumed that the mother will be the primary caregiver.
- There should be recognition of the societal gender bias against women.
- Any list of factors should be culturally sensitive in their assessment of how parents function.
- The legislation should use wording that allows for the inclusion of the extended family and others to whom the child may be attached. The use of the word *parenting* is limiting in this regard.
- The agreement should be revised periodically.

- Wording should be chosen to eliminate the idea of a "winner" and a "loser."

ROLES AND RESPONSIBILITIES OF PARENTS

What are the salient roles and responsibilities of parents following separation or divorce?

Only two of the Manitoba sessions discussed this question as a separate issue. The discussion generally reflected the themes participants raised about best interests of children, since participants felt the role of parents upon separation is primarily to ensure that their children's best interests are met.

Ensuring Children's Safety

Participants said the parents should be responsible for providing an emotionally and physically safe environment for the children in and around the home. This would include providing for children's basic needs, such as food, clothing and shelter.

Ensuring Stability, Consistency and Predictability in the Children's Lives

Participants said parents must strive to cause as little disruption to children's lives as possible. It was suggested that parents should set consistent rules and boundaries for the children in both households to lessen the children's sense of confusion. Some also suggested that parents must base decisions about where the children should live on the children's needs (including proximity to a familiar community).

Ensuring Adequate Parental Access

Some participants said that both parents have a responsibility to maintain contact and communication with the children. It was pointed out that when a non-communication order has been issued, or when direct communication may be unsafe, communication could take place via a neutral party or via fax, letter, and e-mails. (Note that although this suggestion was made by a participant, to do as suggested could result in the communicating parent facing criminal charges for violation of the non-communication order.)

It should be the parents' responsibility to share information freely and in a timely manner with the other parent regarding such issues as school pictures, report cards, and dental or medical care. Some participants said it should be the responsibility of both parents to obtain information, so that staying involved with the children's schooling does not fall on only one parent's shoulders.

It was suggested that parents need to respect each other's ability to raise and provide for the children while the children are at the other parent's home. Children's time with the other parent needs to be respected, as well as the other parent's right to love and have time with the children. It was also noted that parents should meet their financial commitments to one another.

Ensuring that Children are Allowed to be Children

In keeping with the discussion on the best interests of children, participants emphasized that parents must take responsibility for not involving their children in adult issues and conflict, and for not putting the children in a situation of having to choose between parents. Thus, parents must not speak negatively about the other parent in front of the children. And they must make sure the children do not become involved in the legal dispute. It is the parents' responsibility, not the children's, to generate positive solutions to conflicts. Participants stressed that parents should not communicate through their children.

Participants stressed that parents should always remain child-focused. Both parents should encourage children to express their feelings towards the other parent, and make sure they know it is all right, for example, to miss the other parent or to feel hurt.

Participants also suggested that parents must be responsible for maintaining extended family ties in a positive way, as well as the cultural or religious extensions of those ties (when the culture or religion is part of the child's sense of belonging to that family).

Seeking External Support

Many participants felt that parents must assume the responsibility of seeking external support for themselves. Parents should seek counselling or mediation to resolve issues rather than using the courts. It was also pointed out that parents need to respect the other parent's choice to seek counselling. The need for counselling should not be used as a weapon against the other parent.

Some participants suggested that it be mandatory for parents to attend programs regarding children's and/or parents' needs to help them deal with ongoing issues. Others said that such programs for parents should be readily available after a separation or divorce, but that they should be optional.

What services would be helpful to parents who are trying to reach agreement?

Participants offered many suggestions for services for parents and children before, during and after separation. Besides specific services, participants suggested improving the current general approach to providing support services, including structural issues of access to services.

Structural Issues Concerning the Provision of Services

Participants said that services for parents could be improved by increasing funding, making services more timely and affordable, coordinating services better among agencies, and placing more emphasis on early intervention and follow-up measures. The need for services that can embrace language and cultural differences was also noted. Services should be more physically centralized, with a safe place available for "one-stop shopping" for all services. Some participants identified the need for increased services for rural families. Some also said there must first be better understanding of the barriers to accessing services before real improvements can be made.

Mediation and Dispute Resolution Services

Participants suggested that mediation and other neutral services or community committees should be available to help parents develop a parenting plan. Mediation could also be used for negotiating access issues. A range of dispute resolution services exists that parents should be able to access, including comprehensive mediation, therapeutic mediation and therapeutic access services. Family conferencing centres were also mentioned as a venue for assessing levels of potential violence and for involving all family members in a discussion about conflict issues.

Some participants remarked that conciliation and mediation workers need to be adequately trained and skilled. It was suggested, for example, that mediators should be more aware of gender-based power issues. Some participants argued that mediation should remain voluntary. Also, parents should have access to resources to help them better prepare for participating in mediation. Also suggested was coordination between social and legal services to facilitate information sharing.

California Special Masters Program

Reference was made to Special Masters, who can help families after a financial order is made and when conflict continues to arise or during the process of separation (with emotional issues, for example).

Counselling and Support Services

Some participants felt that mental health services, in general, need to be more readily available. Participants also mentioned anger management and divorce counselling, and suggested that support groups (such as talking circles) should be made available to all victims and offenders, or for people going through separation. Such groups should be generally available to all families with problems, not only in situations of family violence. Some participants stated that professionals engaged with families should be able to have affordable access to experts. Another suggestion was that there should also be support groups for custodial parents.

Family Sponsors

Some participants suggested the idea of a family sponsor. For example, in some Aboriginal communities, elders work with parents to help them strengthen the marriage bond and resist separating.

Counselling for Children

It was noted that counselling services should be available for children, and that they be available in a timely manner. For example, some communities currently have access to a particular service only two times per year. Follow-up services and advocacy for children were also mentioned.

Access Services

A great deal of the discussion focused on access services. Supervised access centres were considered very important, as they protect children from witnessing violence and allow for contact with both parents. Participants put forth many suggestions, including the following:

- Some felt that access agencies should be able to work with and refer people to other community agencies (it was felt that currently access agencies are often prevented from doing so).

- Others suggested that access agencies engaged with families should be able to liaise with the courts in some way, in order to provide feedback to families, so they don't have to rely on lawyers to report back to them.

- Some participants said supervised access centres would become more sensitive to children's needs if more visits were possible.

- Participants also said that services should be expanded to include transition and exchanges between parents.

- Some participants proposed that access services should be extended to family members, even when a court order does not exist. Participants discussed whether this should occur with or without the agreement of parents.

- Others participants said that supervised access needs to be more available outside the access centres, and in the presence of supervisors or adequately trained workers.

- Again, some participants noted that barriers to access exchange services need to be removed for people who are not using them.

Education and Information

Participants generally agreed that obtaining timely, readily available information and education about children's needs and development, parenting and custody and access issues is important. Some felt that existing educational programs should be better advertised, and that much information could be made available in a cost-effective way (for example, on-line) or through a single source (such as an information clearinghouse).

Participants suggested that parents need to educate themselves about parenting, the emotional impact of separation on children, financial issues associated with separation, separation and divorce issues (as part of pre-marital education courses), legal issues, conflict management, availability of services, and issues particular to single-parent families. In particular, some participants identified the need to have parenting classes for young parents as a preventive measure.

Information about the *Divorce Act* should be made available in simple language. Translation for individuals whose first language is not English should also occur.

For the Sake of the Children

Some participants pointed out that the "For the Sake of the Children" parent education program successfully helped parents in Manitoba understand the affects on children of separation and divorce and develop harmonious relations during and after the divorce process. There was some discussion about whether this program should be mandatory or remain voluntary for parents.

Legal Aid Services

Some participants called for funding to facilitate better access to legal aid and free legal information.

Court Structure

Some participants noted that the court structure needs to accommodate families in a more timely fashion. Court facilities should be made more family-friendly. It was noted by some participants that case conferencing should be more readily available, without parents having to make multiple filings.

Other

Some comments were made in one Manitoba workshop about child support. Some participants noted that in Manitoba the amount of the support payments is deducted from the receiving parent's welfare cheque. Thus, the paying parent has no incentive to make the payments. It was suggested that interprovincial cooperation is needed to solve the problems associated with support payments. It was also mentioned that the law should be more severe with delinquent parents.

There has been considerable debate over the most relevant and appropriate wording to be used in the legislation (various options are fully described in the discussion guide.) What do you feel is the appropriate message to include in the legislation?

Care and Control

Some participants noted that in Manitoba the terms *care* and *control* are used instead of *custody* and *access*. Parents might have primary or secondary care and control of the children, and one parent may have final decisionmaking powers when they are unable to agree. This terminology addresses both the physical and emotional levels of responsibility. Physical responsibility can be shared, but emotional responsibility is always equal. Some participants felt that this terminology leads to rivalry between parents, both of whom may want the greater degree of control. Others pointed out that the terms *care* and *control* need to be better defined in the legislation.

Custody and Access

While participants expressed a wide range of views on terminology, the majority seemed to feel that the terms *custody* and *access* are not appropriate. Participants felt that these words connote a sense of ownership, implying that there is a winner and a loser. It was mentioned that the terms *custody* and *access* criminalize families and children (connotation of the penal system). Some felt that more neutral wording (such as time shared with each parent) is important to discourage conflict. It was suggested that the current terms give parents a menu of what they can get, rather than focusing on their roles and responsibilities. Some participants felt that the current terms give custodial parents much greater power over non-custodial parents. Non-custodial parents may also feel less responsible and, therefore, contribute less.

On the other hand, advocates for keeping the terms *custody* and *access* argued that changing the wording would lead to increased time in court (from having to continually define the meanings of new terminology). These participants suggested that the focus should be on education to remove the current connotations. They also felt that the current terms give a clear message that is understandable to all. Others stressed the need for clearer definitions of the terms. Some participants noted that using new language could affect international custody agreements.

Parental Responsibility

Many of the participants thought that the term *parental responsibility* would be an appropriate choice of terminology. In contrast to *custody* and *access*, *parental responsibility* is a neutral term that can be defined differently for each situation and therefore used more effectively to achieve parental consensus. It was noted that the term *parenting plan* does not connote a winner and loser, and the plan would outline how the responsibilities would be shared. Some participants suggested that use of the term would underscore ongoing parental responsibility. Participants also felt that this term is preferable to *shared parenting*, which seems both more emotionally laden and less focused on the needs of children.

Those arguing against *parental responsibility* generally felt the term is too vague, and thus could lead to more conflict and litigation. Some felt that it suggests the negative connotation of ownership. Others pointed out that responsibility is not innate but acquired.

Shared Parenting

The terminology and concept of *shared parenting* was strongly preferred by some participants. It was seen as a positive and non-adversarial term. The concept is based on the presumption that both parents take equal responsibility (as a starting point) in providing for the children, and that this is non-adversarial. Parents wishing to start from another position would have to demonstrate why they should not have shared parenting. Some participants suggested that shared parenting is in the best interests of children (except in violent situations). Extended family members could also be involved in shared parenting.

Other participants voiced very strong objections to the concept of shared parenting. One concern was that the presumption of shared parenting may make agreements allowing parents to live in separate communities (e.g. due to work demands) difficult to negotiate. The impact of mobility in general was discussed. Participants mainly argued that the concept conceals power imbalances between parents and between genders, and puts abused parents at a disadvantage. A concern was raised that families might need help to determine when shared parenting is not appropriate. It was felt that parenting decisions should not be made when there are unproved allegations. Some participants felt that achieving shared parenting is a not very realistic goal (equality is implied but does not exist; some parents do not want to be involved in parenting).

Some participants argued that with shared parenting as a legal presumption, proving what is in the best interests of children may be difficult: "It is a good moral position with a questionable legal outcome."

It was also felt that with shared parenting, the 40 percent rule should be dropped. The whole family situation should be examined financially and the needs of the family developed holistically. It was also noted that a change is needed with respect to 50-50 time sharing so that financial security is not greatly reduced. Child support should not be tied to time sharing.

Overall Messages

Participants delivered the following overall messages about legislation:

- The *Divorce Act* and terminology used in it should focus on the children. Parents are not divorcing their children, and children are entitled to have a family. Some participants mentioned that children's right to a family should be a guiding principle in the Act. The Act should combine consideration of children's rights with parents' responsibilities.

- New terminology should encourage a focus on children's needs, consider the family as a whole, and encourage parents to make decisions in the best interest of their children.

- Vague language brings about high conflict, so meanings of terms need to be neutral and very clear. The same messages must be conveyed to parents, police, lawyers, judges, extended family members and children themselves.

- Participants strongly argued that a change in words will not make a difference unless the way in which the system as a whole works also changes. For example, services would need to be in place to deal with a less adversarial approach. The terms should also be used consistently across the country. Some participants questioned how new terminology would affect child welfare legislation.

- Legislation should include rights of extended family members.

- The language should have a positive self-fulfilling prophecy: clear expectations about the importance of children's needs.

- Others suggested that changing the legal wording will not lower conflict. "You can try to legislate change, but not attitudes." It was suggested that attitudes could be changed through education.

FAMILY VIOLENCE

What are the issues facing children in situations of family violence?

Participants gave lengthy accounts of the possible effects of violence on children, all of which were described as "complex." First and foremost was that children in situations of violence face a loss of physical and emotional safety. Children who are unable to predict behaviour in their immediate environment may lose their sense of security. Children in situations of family violence may be deprived of basic physical needs, such as sleep.

Participants in all sessions stated that children in situations of family violence and conflict tend to live with a sense of constant fear, feel guilty, assume the conflict is their fault, and lose their sense of trust. Children in such situations may become "parentified"—feeling they need to take care of and worry about the parent and their siblings. Children are likely to develop low self-esteem.

Many participants said that physical and emotional abuse result in both immediate and long-term behavioural problems for children, manifested in poor problem-solving skills, acting out and depression. Many participants suggested that "violence teaches violence." As children learn that abuse and oppression are acceptable, violence is transmitted and frequently carried on by the children in adult lives.

Some participants discussed children's and parents' needs in situations of family violence. It was suggested that both parents and children need counselling. Supervised access centres were considered very important in facilitating the transfer of the children between parents. Some participants also suggested that an independent service be set up to investigate allegations of abuse, so that the burden of proof does not rest on the parents' shoulders, since it is difficult to prove the presence of abuse. Some participants wondered how to determine when children are able to decide for themselves whether they want to visit the non-custodial parent. Others wanted to know how a relationship between a parent and his or her children can be re-established after a period of limited or no contact.

What messages would you like to see reflected in the terminology and legislation with respect to family violence?

Definition of Family Violence

Some participants discussed the need to define the terminology associated with family violence. Some argued that the definition must include various forms of violence, including physical and emotional violence. Others suggested that "family violence" must be distinguished from "domestic violence," but that the latter must also be considered when making decisions about custody and access. The point was made that the definition of *violence* is culturally determined to some degree. Some participants said that legislation should recognize that both men and women can be abused and that this abuse should be taken seriously.

Option 1
Some participants said that the courts already take family violence into account and were in favour of leaving the legislation unchanged. This would increase the emphasis on services and resources.

Option 2
No specific comments were recorded about option 2.

Option 3
Some participants indicated their support for family violence being a factor that judges are obliged to consider.

Option 4
Many participants favoured option 4 because they felt that children's right to safety ought to always override a parent's right to parent. The message should be that a violent parent is not a good parent. To the "presumption of limited contact with family violence," some participants added that contact between parents should also be eliminated when violence is a factor. Some participants felt, however, that the presumption of "limited contact" may encourage more false allegations by parents who want custody of their children. Some participants said that parents

who are victims of violence should not have to negotiate with the other parent when they are afraid. It was noted that during conflicts, abused parents may wish to avoid the abusing parent, even when they risk losing child support. Some participants noted that judges must consider violence as a factor according to standards described by experts in the family violence field.

Option 5

Some participants favoured option 5, in particular when the children are not at risk. Some argued that children can still benefit from contact with a parent that has been abusive towards the other parent. Such contact should take place under supervision. It was noted that the "friendly parent rule" discouraged families from dealing with violence issues and should be repealed. The option of "no contact" should exist for families when there is no benefit, and potential harm could occur during access.

With regard to both option 4 and option 5, many participants said that appropriate and timely assessment services should be in place to determine the degree and impact of possible violence. There was disagreement among the participants, however, about the role of assessments in determining violence. Some felt that allegations of violence should be proven rather than assumed. Others said the law must consider protection of children as paramount and seriously consider allegations of violence even if not proven by the assessment. Some participants suggested that the burden of proof should not rest with the parent because of the difficulty of proving abuse. There was some agreement that allegations of abuse must be investigated quickly.

Treatment and Counselling

Participants further discussed whether abusive parents should be required to accept treatment and counselling. While many felt this should be the case, others said such treatment must be done in a sensitive manner, considering that adult offenders frequently are victims of violence themselves. It was noted that orders for supervised access often expire without further assessment or monitoring of the situation. Instead, positive changes and participation in treatment need to be shown. It was also noted that in cases of family violence both parents and children need counselling.

Messages for Legislation

- Legislative changes must be accompanied by adequate funding of the services needed, as well as training and education programs. These could include supervised transfer locations and independent services to investigate allegations of abuse.

- Legislation should define what level of violence will result in the law limiting a parent's involvement.

- Resources need to be applied to violence detection and treatment, and to address allegations that are unrecorded and unverifiable. Resources are necessary to legislate violence as a factor in family access orders.

- Funding is also required to deal with offenders in a sensitive manner.

- Legislation must take into account the role of the extended family in violent situations.

- Judges should have more power to order counselling as a condition of ongoing access. If this were so, services would have to be regularly available (not just two times a year), and legislation would have to mandate which services were to be available.
- Section 43 of the Criminal Code of Canada sets out corporal punishment of children, with few restrictions, as an exemption to assault. This needs to be addressed when looking at violence to children.

Table 1: Organizations Represented at the Flin Flon Workshop

Aurora House Crisis Centre, The Pas
Cree Nation Family and Child Caring Agency
Flin Flon District Assessment and Referral Services
Flin Flon Indian and Métis Friendship Association
Legal Aid Manitoba, The Pas
Manitoba Métis Federation, The Pas
Mayer, Dearman, Pelizzaro, Thompson
McDonald Thompson Huberdeau, Thompson
Mirwaldt & Gray, The Pas
Northlands Community Law Centre
Wight Law Office

Table 2: Organizations Represented at the Brandon Workshop

Abandoned Grandparent Support Group
Bachelor of First Nations and Aboriginal Counselling Program, Brandon University
Brandon Access Exchange Service
Child and Family Services of Central Manitoba
Child and Family Services of Western Manitoba
Dakota Ojibway Child and Family Services
Darrin White Family Foundation
Grand Society for Grandparents' Rights
Health and Human Services Division, Assiniboine Community College
Meighan Haddad & Co.
Portage la Prairie School Division
Roy, Johnston & Co.
Salvation Army
Samaritan House
Shilo Military Family Resource Centre
Westman Women's Shelter

Table 3: Organizations Represented at the Winnipeg Workshop

African Women's League
Centre Youville
Child and Youth Care Program, Red River Community College
Child Guidance Clinic
Child Protection Centre
Community Legal Education Association
Family Centre of Winnipeg
GRAND Society (Manitoba Chapter)
Legal Aid Manitoba
Loewen Martens & Rempel, Barristers and Solicitors
Lofchick, Jones & Assoc.
Manitoba Association of Social Workers
Manitoba Association of Women and the Law
Manitoba Women's Advisory Council
Men's Equalization Inc.
Native Women's Transition Centre
Nova House Inc.
Philippino Community Association
Resolve Manitoba
Southeast Child and Family Services
Taylor, McCaffrey, Barristers and Solicitors
Winnipeg Child Access Agency Inc.
Winnipeg Child and Family Services

Table 4: Organizations Represented at the St. Boniface Workshop

Robertson Shypit Soble Wood, Barristers and Solicitors
L'entre-temps des franco-manitobaines
Association des directeurs/trices d'écoles franco-manitobaines
Conseil consultatif de la femme (Manitoba)
Division scolaire franco-manitobaine
Ligue féminine des catholiques du Manitoba
Pluri-elles (Manitoba) Inc.
Association des juristes d'expression française du Manitoba

INTRODUCTION

Workshops on custody and access were held in Moncton on June 20, 2001, and Fredericton on June 22, 2001. In total, 17 participants were involved in the workshops. A list of all participants is provided in tables 1 and 2.

The following topics were discussed:

- best interests of children;
- roles and responsibilities of parents; and
- family violence.

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

What are children's needs when their parents separate?

Emotional Needs

Participants felt that children's needs do not change very much through the process of separation and divorce. Children need to be happy, healthy and safe, and, among other things, to know that they will continue to have their physical needs met and be kept safe from violence. They need to know that both their parents love and respect them, that they will continue to see both parents, and that they are not to blame for the separation or divorce. Children need continuity and stability in their daily routine, standard of living and family, as well as predictability in what will happen to them. Children also need to continue to connect with their culture. Participants also felt that children should not be forced to grow up too soon, to take on adult responsibilities or become the "repair person" for their parents' relationship.

Relationships

Participants felt that children need to have both parents in their lives. The parents should be responsible, provide a stable, calm environment that is free from conflict, and not use children as pawns against one another or as negotiation tools. Children should also continue their other non-parental relationships, including those with grandparents and other significant adults.

Support

In terms of outside intervention, children need help to live through and process the changes they are experiencing. Self-help groups for children might help to do this by letting children see that they are not alone in their experiences. Parents should be open with their children, allowing them to express their feelings about the situation, even though this may be difficult for parents to hear. Children's voices must be heard during the separation or divorce. One suggestion for accomplishing this was to use a child advocate. Although children need to be informed about the situation and their desires need to be taken into account, participants felt that children should not be placed in the position of decisionmaker.

Given the changing nature of the family, participants said that the definition of *best interests of the child* must be clearer and brought up to date, since it might otherwise be interpreted in a stereotypical and dangerous way. Participants also said that the children have most likely been aware of problems in their parents' relationship for some time before the separation, and that it would be difficult for them to believe that a "perfect" family relationship can be re-established.

Codifying the Best Interests of Children

During the discussion of whether codification is a good idea, participants said that the question is largely irrelevant, since there were very few applications made under the *Divorce Act,* and most questions about the children are settled before the actual divorce. Furthermore, provincial legislation in New Brunswick already identifies these factors, and they are weighed by judges during the decisionmaking process. Other participants felt that because provincial legislation identified some factors, it is essential that the federal legislation do the same in order to harmonize the two. It was also felt that codifying only certain factors might be counterproductive, as it would limit judges' discretion when dealing with the unique situations of divorcing couples.

Factors to Include

Participants said the law should state that children have a right to both parents. They also felt the parenting plan and the children's development should be taken into consideration, along with the children's ages, education and level of emotional development. Some participants suggested that input from members of the extended family should also be sought, since they play an important role in stabilizing the children's environment. Parents' support for the children's special talents and aptitudes should also be a factor.

Violent Situations

Participants said that the factor "healthy and positive relation to both parents" needed to be clarified, and that violence should be clearly addressed in the law. Some participants felt that the "maximum contact" provision should be overridden in cases of violence. Other participants said that, when a violent situation exists, an exclusive part of the law should address children's needs, rather than the section of the law that applies to all other situations. Violence would be flagged in the list of factors as a signal to apply the specific section dealing with that issue.

Type of Parenting

Participants had varying opinions on what type of parenting should be identified in the law. Some expressed concerns about making shared parenting the default. Others said that there should be a presumption of shared responsibility for the children unless violence is a factor, because most separating and divorcing parents are not violent. Participants felt that the parents' behaviour needs to be taken into account in decisions on the type of parenting arrangement that would best meet the needs of children.

Representation of Children

Some participants felt that children should be represented in court by a lawyer to ensure that their interests are represented during the process. However, participants emphasized that children should not be asked to witness or take part in court proceedings, as this would mean that they would have to support one parent or the other.

ROLES AND RESPONSIBILITIES OF PARENTS

What factors enable good parenting after separation or divorce?

Participants found that, since children will continue to have much the same needs as they did before the separation or divorce, many of the parents' roles and responsibilities will continue as before. That said, participants also recognized that depending on the post-divorce parenting arrangement one or the other of the parents might need to learn new skills in order to fulfil his or her roles and responsibilities.

Parental Behaviour

Participants felt that the parents' ultimate responsibility was to keep their children safe from the effects of conflict and violence. Parents need to learn to cooperate in their parenting, communicate effectively with one another, and keep the peace. Participants also pointed out, however, that it is often difficult for parents to act with maturity during the process of separation and divorce.

Achieving and Respecting Agreements

Participants said that parents should be responsible for coming to their own agreement whenever possible, and acknowledged that services should be provided to help them do so. Some participants said that mediation would be useful, while others felt that mediation is unsuitable for high conflict divorces because they are inherently conflictual and difficult to resolve to both parents' satisfaction. Participants felt that an open judiciary system that was easily accessible and came to a decision rapidly would help parents fulfil their roles and responsibilities, although they emphasized that the state should be the arbiter of last resort.

Some participants said that respecting access agreements was fundamental. Others said that contact with children is of little value when it is done to punish the other parent or for a financial advantage (such as a reduction in child support payments).

Improvements to Services

Education

Participants said that parents going through a divorce or separation needed to learn how to parent effectively after the divorce, and that parenting skills classes would be helpful. These courses should continue throughout the divorce and afterwards, and not be just a one time course. It was suggested that the program "For the Sake of the Children" is a useful educational opportunity for parents, and that the media could play a useful educational role. Participants felt that judges and lawyers could also benefit from more education in family law and even in psychology.

Other Services

In terms of improving the relationship between the two parents and between the parents and their children, participants felt that both mediation and counselling services should be made available to parents and children.

Participants also identified legal services that should be made available. These included law information services, advocacy services (for children) and child assessment services, and centres for supervised access.

Characteristics of Services

During the discussion on services, participants developed a set of characteristics that they felt that all services available to parents and children during separation and divorce should embody. Services should be timely and quick off the mark, because early intervention is crucial and waiting lists should be reduced. Services should be delivered equally, no matter what the parenting arrangement. Participants brought up difficulties with medicare cards and report cards (both of which can only be issued to one of the two parents), and also with other health plans (one parent may be enrolled in the plan and be reimbursed for medical expenses that were actually incurred by the other parent).

New Terminology

When discussing what messages need to be contained in the wording of the law, participants felt that an important goal of the family law system should be to take pressure off parents and minimize the potential for conflict. Participants said that services should be clearly available to both parents, regardless of how they are provided (privately or publicly). Participants also highlighted the need for rapid response and early intervention when there is conflict, for example, over access in emergency situations.

In addition, participants said it was important to send the message that children are Canada's primary resource and that they need access to the necessary programs and resources.

Looking at the Law

When examining the options listed in the discussion guide, participants expressed varying opinions on the merits and problems of each.

Custody and Access

With regard to the terms *custody* and *access*, some participants said these words interfere with parents trying to develop their own arrangements to suit their unique situation. Other participants said that this terminology presumes that there will be a custodial and non-custodial parent, rather than starting with an assumption of equality between the parents. Participants also pointed out that the French wording (*droit de visite*) implies that the parent or children are merely visitors in the life of the other, and has a much narrower meaning than the English term *access*. Some participants supported continued use of the terms *custody* and *access*, particularly in situations of family violence or when one parent has abdicated his or her parental responsibilities.

Parental Responsibility

Participants felt that the term *parental responsibility* should be defined clearly if it is to be used; however, it would clarify the issue of the responsibilities of *both* parents. Some participants felt that option 3 would be best, as it reduces the meaning of *custody* solely to the physical residence of the child, while considering all other factors parental responsibilities.

Shared Parenting

Some participants said that the term *shared parenting* might be confusing. Others felt that it was the best option, because it clarifies that something is expected from both parents and therefore moves away from a winner-loser situation.

Other Issues

Regardless of the terminology to be used, participants felt it was dangerous to make assumptions about the "ideal" post-divorce parenting arrangement. In some cases both parents will not want an equal share in the parenting responsibilities, and they usually did not share parenting responsibilities equally before the separation. Moreover, it will not always be the case that custody and responsibility will reside with only one parent (as in sole custody). Participants felt that the terminology should separate the parental role from custody so that a parent who does not have custody does not automatically lose his or her role as a mother or father.

Participants felt that changing the terminology will not change people's perceptions of the divorce process. New words may remove emotional baggage for a short while, but as soon as people have experience with the new terminology, the emotional baggage will return. Nonetheless, it is important to move away from terminology that implies that the children are "goods" to be assigned one way or the other.

Participants also felt that the effect of new terminology on other laws should be taken into account, and that clearly defining any terminology used is especially important in highly litigious cases. Some participants also suggested that custody and access orders need to be enforced with the same rigour as orders relating to child support.

FAMILY VIOLENCE

What are the issues facing children in situations of family violence?

Participants identified security, trust, self-esteem, isolation, feelings of betrayal and conflicting allegiances as key issues facing children in situations of family violence.

Defining and Addressing Violence

Participants felt that defining *violence* is key to addressing the issue in family law. The definition should include emotional abuse and take into account that the effect of witnessing violence is the same as the effect of directly experiencing violence. The law should also take into account the effect of family violence on very small children. Participants cited an Ontario study on the effects of violence on children under the age of three.

Participants said that family violence is an issue that supersedes all other discussions on the needs of the children or on services that should be provided or mandated by law. For example, although they felt mediation was effective in situations without violence, participants emphasized that it is of little value in violent situations and may, in fact, be counterproductive. Some participants felt that a custody assessment should take place in every case in which family violence is an issue. Other participants commented on the need for supervised access centres. The need for education also came up several times: for judges, for other professionals who come into contact with families and children, and for parents.

Access in Violent Situations

In regard to access in situations of family violence, participants had several views. Some participants felt it was appropriate and necessary for children's well-being that they continue to have some contact with both parents. Other participants felt that it was difficult to ask a parent to promote access when family violence was an issue. They also felt that access rights might be a source of potential harassment.

Proving Violence

Finally, participants discussed how difficult it is to prove whether violence is occurring in a family. Some participants said a holistic definition of violence should be used to ensure the safety of women and children as they seek to leave the violent situation. Others pointed out that it is difficult to base allegations on evidence of a pattern of violent behaviour, since even one incident of physical violence can have lasting effects that show in emotional abuse and control of the victim. One suggestion was that the proof required for family violence should be the same as what would be required for a judge to post a peace bond.

Participants at the Moncton session said that they supported the Neilsen Report recommendations on family violence (see Appendix A, page 171).

Looking at the Law

With regard to terminology and the law, the participants said the most important message to get across is that violent situations are not acceptable and must follow a different path to resolution than non-violent situations. They also emphasized that safety has to be the first priority and that emotional violence as well as physical needs to be taken into account. Some participants felt that there should be a presumption against awarding full or joint custody to parents who have abused their former partners, while others felt that the "friendly parent" presumption should not apply when family violence has occurred.

Some participants questioned the validity of the process used to assess allegations of violence, and the weight that should be given to the testimony of children and adults during that process.

Some participants felt it was important to mandate services for children and adults. These services should be widely available across all the provinces and territories.

Options for Legislative Change

When discussing the options presented in the discussion guide, participants agreed that any option would preferable to option 1 (no change to current legislation). Some suggested that family violence could be addressed in the preamble to the legislation. Others favoured option 3, which they felt allowed family violence to be a key determining factor. Option 3 seemed to be preferred by participants in Moncton, who also felt that family violence should be added to the wording of section 16 of the *Divorce Act*. Other participants were in favour of option 4, which they interpreted as meaning that supervised contact would be the default in situations of family violence. Still other participants suggested different options altogether. Another suggestion was that, in extreme cases, there should be no contact whatsoever between the children and the abusive parent (in order to protect the children's best interests).

Enforcement

Several participants commented on enforcement issues. They remarked that family court orders are treated differently than other orders and are not enforced by the police. They said there are no ways to enforce custody and access orders or to help parents once a custody order has been granted.

The Wording of the Law

Participants raised a number of general concerns about the wording of the law. They said that the notion of equality of treatment under the law needs to be incorporated. They also felt that looking only at the *Divorce Act* was too narrow an approach, and that the *Family Services Act* needs to be amended to protect children in situations of family violence. Some participants mentioned that, if there were a long list of factors under "best interests of children," family violence would be better discussed separately. However, if the list were short, then family violence could be included without being lost. Also, with regard to factors for determining the best interests of children, some participants felt that the "maximum contact with parents" factor needed to be amended to specify that it does not apply in situations of family violence. Finally, participants felt that time and money must be invested to investigate allegations of violence as quickly and clearly as possible.

Other Comments

During the discussion on family violence, participants also remarked on the need for more services for families (such as education, crisis intervention and front-line assistance), for flexibility in the law to respond to the unique situations of each family and to prevent the cycle of violence from continuing to the next generation. Some participants commented that although education has a role to play, legislation is also needed to make the issue more concrete.

Table 1: Organizations Represented at the Moncton Workshop

A Family Place/Cercle Familial
Canadian Bar Association (Family Law section)
Legal Aid, Moncton

Table 2: Organizations Represented at the Fredericton Workshop

Family Court Mediator
Family Court Social Worker
Family Mediation New Brunswick
Fredericton Anti-Poverty Association
Legal Aid New Brunswick
Legal Aid, Woodstock
Muriel McQueen Fergusson Centre for Family Violence
New Brunswick Advisory Council on the Status of Women
PLEIS-NB
Shared Parenting Association of New Brunswick
Stevenson & Stevenson, Barristers and Solicitors

Appendix A: Recommendations of the Neilsen Report, *Spousal Abuse, Children and the Legal System*, March 2001

a) Legislation should require judges to take into account abuse between parents when making child custody and access decisions.

b) The safety of abused parents and children should be the paramount concern in law (should have more importance than a child's continuing relationship with both parents).

c) There should be a presumption against awarding full or joint custody of children to parents who have abused their former partners.

d) The friendly parent presumption should not apply in cases where there has been domestic abuse or violence.

e) Legislation should allow a court to order treatment or counselling as a condition of access.

f) Explicitly, legislation should recognize continuing domestic violence or abuse as a circumstance justifying a change in a custody or access order.

g) Legislation should provide explicitly for expeditious granting of interim custody and access orders in cases of domestic abuse and violence.

h) Governments should create and fund safe facilities where parents can exchange their children and where access can be supervised.

i) Court staff and family court judges should have more specialized training on the dynamics of family violence and abuse.

j) Practising lawyers should have more specialized training on the dynamics of family violence and abuse.

INTRODUCTION

Five consultation sessions on the new *Divorce Act* were held in Newfoundland and Labrador in May and June 2001. These consultations were sponsored by the federal and provincial departments of justice and held in Goose Bay, Corner Brook, Gander and St. John's (2). The topics covered in these sessions included roles and responsibilities of parents (parenting, custody and access), family violence, meeting access responsibilities and child support. A total of 90 people attended the sessions, ranging from parents, representatives of women's groups, lawyers, mediators, teachers, law enforcement workers, social workers, psychologists, mental health workers, representatives of community groups, and support application and court workers. Rick Morris of IHRD Group facilitated each of the sessions, held between May 31 and June 7, 2001.

KEY FACTORS IN POST-SEPARATION PARENTING

The two key factors described by participants as influencing post-separation parenting were the relationship and communication of the parents and the support services available to the parents and their children. Participants also mentioned specific things that affect post-separation parenting, including the following:

- the lack of parenting and legal information for parents throughout the province;
- cooperation and trust between parents;
- the lack of services, especially in rural areas;
- conflict between the parents;
- the need to keep children out of the middle of conflict;
- the responsibility and mobility of non-custodial parents;
- clear parenting plans;
- children's independent access to services;
- the need to keep a long-term vision of the process;
- the realities of people's circumstances (one size doesn't fit all);
- early resolution of issues, at least temporarily;

- members of the extended family and how they deal with separation issues;
- the presence or absence of violence and substance abuse; and
- third parties.

SERVICES

There were concerns raised in all sites except St. John's about the paucity of services to help separating couples and their children. Publicly funded family mediation is available only in the St. John's and Corner Brook areas, the latter as a result of a recent pilot project. There appear to be no formal public prevention programs in place for troubled marriages (e.g. marriage counselling or enrichment). Legal aid is overtaxed and access to it is often problematic. Support and education groups for children and parents, while seen as essential, are only offered sporadically outside of St. John's to date.

There were great concerns about service equity expressed in the sessions outside St. John's. The general sense was that a minimal service delivery requirement would be regional access to alternative and support services to families experiencing a marital separation and divorce. The fact that 50 percent of all relationships in the province end in separation and divorce was seen to be vastly underrepresented in terms of services available. Other common comments included the following:

- need for more legal aid services;
- lack of policing in rural and aboriginal areas;
- circuit court does not allow for adequate time to obtain information on the legal system;
- too much reliance on volunteers;
- lack of services, especially for children;
- lack of services generally in Labrador and central Newfoundland, which leads to inequity and danger in the case of women fleeing violence;
- 50 percent divorce rate but no associated services;
- services need to be available in a timely manner;
- need for child advocate;
- need for preventive services (i.e. marriage counselling, which is not currently available free anywhere in the province);
- need for mediation access with good screening tools for violence;

- parents need information on services available;
- where mediation exists, there are long waiting lists;
- services are accessed more easily through the court, and tend to serve primarily the court's interests;
- actual accessibility of services: when offered in St. John's, not accessible to other areas in that region (i.e. Harbour Grace and Marystown); and
- parenting courses are useful, as are informal networks.

CUSTODY AND ACCESS

For the most part, participants expressed the view that the terminology of *custody* and *access* is not in and of itself problematic, and that changing these terms may invite more, not less litigation as new terms (i.e. shared parenting) are tested. Interestingly, some lawyers who practise using the current terms were the ones who most strongly advocated for changes. Participants from the women's community were the ones most concerned about any new terms diluting or misrepresenting pre-separation parenting histories.

There were concerns raised about creating a presumption of shared parenting or joint custody in the new *Divorce Act*. While this may be a suitable option for many families, the general sense was that the historical parenting arrangement needs to be a key determinant of future plans. Mental health and school officials expressed specific concern about frequent shuttling of children from one parent to another, which they described as being more in keeping with the needs and interests of parents rather than children.

Most participants liked the emphasis on responsibility instead of rights in the proposed new Act. Many also suggested that a service to provide families with information on parenting and the law in a timely manner was essential.

Specific comments included the following:

- Changing the language will not change the issues. This was the predominant view in all but one session. Lawyers who do a lot of family law seemed more likely to support changes to the terminology than other participants.
- Any terminology used needs to be clear.
- There are concerns that the new concepts do not recognize women's typical roles.
- The current sub-divisions in the term *custody* cover all situations.
- Changing terms may open up a long legal process to test the new terms, and there will be a need for extensive training for all involved (there is no advantage to this).

- Money should go to services, not semantics.
- The emphasis on responsibilities instead of rights of parents was supported by all participants.
- The knowledge and experience of judges is key to how they deal with situations.
- There is a need for responsive services early on that educate parents; custody fights often begin because people don't know the process or the law.

FAMILY VIOLENCE

All participants agreed that situations of family violence need to be dealt with differently than other separations and divorces. There needs to be an acknowledgment that separation involving violence is high risk, and so a responsive system is essential. There needs to be a presumption that when violence to a parent occurs, this is harmful to any children involved, and is the responsibility of the perpetrator. The perpetrator of the violence has an onus to demonstrate that in order to ensure access may proceed, the safety of children and the other parent is not jeopardized. Screening tools need to be developed and used in assessing violence in pre-mediation processes. Follow-up review needs to be in place to ensure ongoing safety.

Some specific comments included the following:

- The term *family violence* is incorrect; it should be *wife battering*.
- Safety of the woman and children needs to be paramount.
- People are falling between the cracks and so are not being identified or served.
- It is difficult to get peace bonds in some areas.
- Women are being compelled to release their addresses and violent men are looking for custody.
- There needs to be a presumption that witnessing violence is akin in impact to violence itself. The notion that a man's violence toward his female partner is unrelated to his role as a parent needs to be abolished.
- There are cultural barriers in Labrador.
- Judges are very inconsistent on these issues.
- These issues need to be dealt with in a speedy process; fast-tracking is key.
- Violence should be a key determinant in obtaining custody.
- A man who has been violent needs to demonstrate his safety when obtaining access and should bear the costs of supervision.

- Supervision of access should be by trained personnel.
- There needs to be a follow-up and review process.
- There needs to be a screening process for violent men with respect to mediation and other family law considerations, including access.
- There may be need for an access service.
- Most violent men will not be convicted of an offence.
- Risk to well-being increases after separation.

ACCESS REQUIREMENTS

While some participants expressed frustration at the lack of responsibility shown by non-custodial parents in many situations, the consensus was that any remedies (e.g. fines) had the potential to harm the children involved. There was less focus on a parent refusing access, but similar sentiment in terms of remedies. The out-migration of parents in this province presents unique challenges in terms of long-distance access (e.g. costs and logistics) and for custodial parents pursuing opportunities. The participants focused on the need for supportive and responsive non-court service alternatives to assist in resolving such conflicts. Specific comments included the following:

- There are substantial mobility issues for custodial (e.g. not allowed to relocate for work) and non-custodial parents alike.
- While parents should not be allowed to walk away from access responsibilities, most participants agreed there were few options to address this issue. A "broken promises" clause was suggested in one session, but the remedies, if financial, are problematic as they affect children.
- Custodians (women) are being denied the right to move to pursue employment because of access rights of the other parent.
- There need to be services to encourage and educate parents.
- Enforcement is a concern, and other agencies (i.e. schools, hospitals and the police) are uncomfortable in the middle and inconsistent in dealing with parents.
- There needs to be an access service: arrangements should be reviewed to ensure they are in the best interests of children, and problem issues would go here to be resolved in a responsive manner by a "custody officer" with enforcement and assistance roles.
- There were considerable concerns raised about the frequent switching of residences in joint custody arrangements. The inference is that these arrangements have little to do with what is best for children but what is best for parents.

CHILD SUPPORT

The recent changes brought about by the child support guidelines were generally well received. However, the use of time as a key determinant of support amounts (the 40 percent rule) was heavily criticized as creating an undesirable link between support and access. Enforcement of orders was seen to be quite inadequate, and skewed negatively against women and children. Those participants not familiar with the enforcement system and its limitations expressed dismay at the lack of procedures to ensure support intended for children is paid. The need for more resources for enforcement agencies generally, and legislation enabling timely reciprocal enforcement between provinces specifically, were paramount issues. Other comments included the following:

- The child support guidelines have generally simplified issues.
- Enforcement is improving but is a long way from where it should be. There is a lack of will, which some linked to the fact that it is primarily women and children who are negatively affected (i.e. reciprocal enforcement can take more than two years, it is difficult to obtain tax information and find non-payers). One suggestion was a national registry.
- Clients need to better understand how enforcement works.
- The dollar-for-dollar reduction for parents on income support receiving child support was generally seen as unfair, as working parents can keep a portion of their income without penalty. It also decreases motivation to apply for support.
- Child support as currently structured is not the "Inuit way of doing things."
- The 40 percent rule links support and custody in a way that is unhealthy in some circumstances: it makes women poorer and men richer. Is time the measure we want to use?
- Support agencies do not have the resources or teeth they require.
- There should be regular reviews of support orders.
- The court process is too long when changes are to be considered.

SUMMARY

The participants in the sessions held in Newfoundland and Labrador emphasized that the need for a responsive and supportive service system, with an emphasis on out-of-court processes (i.e. mediation, education) and enforcement of existing orders (e.g. custody and access and child support), was generally greater than the need for new divorce legislation. Existing public services require more resources (e.g. legal aid and support enforcement). The need for legislation and supportive processes to better address situations of violence was acknowledged. Procedures and laws were recommended to ensure child support is received as intended. Terminology changes were not supported by a majority of participants.

The overall sentiment of these groups is that the current system in place to support separating and divorcing couples and their children is neither responsive nor supportive enough, and provides inadequate and inequitable access to alternatives to the court process. Given the numbers of adults and children involved, participants felt there needed to be a more direct investment in creating and enhancing such services.

A Submission to the Special Joint Committee of the Senate and the House of Commons on Child Custody and Access.

May 25, 1998

Parliament of Canada
Ottawa, Ontario
K1A 0A6

(At the request of the Government of Newfoundland and Labrador, this brief is included as an appendix to the report on the consultations in that province.)

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Labrador West Women's Council, Labrador City - Labrador
Libra Transition House, Goose Bay - Labrador
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and the other participants of the focus groups, without whom, this brief would not have so fully reflected the context of custody and access issues in Newfoundland and Labrador.

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Executive Summary

The purposes of this brief is to present women's realities of custody and access in Newfoundland and Labrador and to provide recommendations to the Special Joint Committee on Custody and Access.

Central to this document are our feminist values and beliefs. These inform how we see the world and how we understand women's experiences. Our understanding of a truly child centred approach also informs our analysis of custody and access issues. The context of Newfoundland and Labrador is the backdrop for this document.

In order to present some of the experiences of women in this province, two focus groups were held. A total of 31 women attended. Many of the women had personal experiences with custody and access or were involved with women through women's centres, transition houses, university departments, social services, health, and justice systems, community-based women's programs, policy departments of government, and single parent's groups.

Using content analysis, four main themes emerged from the focus groups: custody and access, relocation and mobility, violence against women and children, and the legal system. Throughout the document, women's voices are heard and relevant literature is cited.

Seventeen recommendations are given based on the experiences of women in Newfoundland and Labrador.

Introduction

The Provincial Advisory Council on the Status of Women

The Provincial Advisory Council on the Status of Women was established in June of 1980 through an act of legislation by the government of Newfoundland and Labrador. The council works as an arms length equality seeking organization in the areas of advocacy, lobbying, education, and providing advice to the government on women's social and economic equality.

The Provincial Association Against Family Violence

The Provincial Association Against Family Violence was established in 1987. It is an umbrella organization for transition houses and community groups working to provide services to abused women and children. The association assists member groups with program development and information sharing and works in the areas of education, lobbying, and providing input to the government on issues of violence.

Why We Work Together

The Provincial Association Against Family Violence and the Provincial Advisory Council on the Status of Women have a long history of working together on issues of violence and equality. Our organizations are grounded in a feminist analysis of women's lives and the quest for equality and violence free communities.

We have undertaken this brief and presentation jointly because we feel that the mandate of the joint committee and the recommendations which follow from this consultation process will have serious impact on women's equality and access to fairness and justice.

The Advisory Council and The Association Against Family Violence are in continuous communication with women who work at women's centres, transition houses, and with community anti-violence coalitions. We see and hear everyday from women who struggle for justice for themselves and their children.

Our Values and Beliefs

This brief is shaped by our values and beliefs as feminists.

☐ We believe that the power imbalances in relationships are a result of institutionalized patriarchy. The court system emulates these power imbalances.

☐ We recognize that the experiences of growing up in a patriarchal society affects women and men differently. We continuously challenge this worldview in institutions such as churches, governments, and families.

☐ We believe that the work toward equality is work toward a balanced world where women and men are equal, where men and women share equally in the care of the environment, the care of the young and old, and the care of the disabled and disadvantaged.

☐ We recognize that women have different kinds of knowledge than men. It is important to value the knowledge that women have from nurturing children, caring for families, and working in the community.

☐ We believe that children have the right to live and grow in safety and security, without violence or the fear of violence.

☐ We recognize the imbalances in power between men and women, and adults and children. These imbalances are played out very strongly in the family justice system where the contributions of women as the primary caregiver is not acknowledged and is often undervalued.

☐ We recognize that women experience even greater discrimination based on Aboriginal status, disability, sexual orientation, race, and immigrant status.

The Context of Newfoundland and Labrador

Newfoundland and Labrador is a province made up primarily of rural, often geographically isolated communities. In recent years, Newfoundland and Labrador have been devastated by the collapse of the cod fishery and the fiscal priorities of the federal government. In a province that relies heavily on federal transfer payments, massive unemployment has seriously affected families and communities. Out-migration, loss of employment, and heavy dependence on income support programs are all contributing to a loss of personal self esteem, community pride, and a heavy reliance on governments for mere survival. The dominance of small communities, the strong tradition of heterosexual, two parent families, and the hierarchical power of Christian religions have influenced both the power dynamics in families and the way government policies have been developed and applied.

There is more than just poverty in our people. Systems like health, social services, justice, and education are impoverished. The very systems women look toward for support no longer have the resources to assist individuals and families. Access to these systems becomes a problem. There is a lack of Legal-Aid lawyers, courts are being removed from towns, there is little access to social workers, long waiting lists for counselling and mental health services, and minimal access to appropriate supervisors for access.

Abuse and violence is largely a hidden crime in Newfoundland and Labrador, particularly in small rural communities where confidentiality and safety are practically nonexistent. Aboriginal women in Labrador, who have begged for years for policing, now report that there is an acceptance of violence as a normal way of life. Since 1996, over a twelve-month period, four women were murdered by their partners. Women working in transition houses and women's centers report that abused women are realizing that they are more at risk of death when they report the abuse to the police or courts. Many are staying in abusive relationships and taking responsibility for the abusive partner and the care of their children.

Newfoundland and Labrador is a province that has begun to take ownership and responsibility for abuse. The court cases involving the Mount Cashel Orphanage victims, sexual abuse by clergy, and numerous victims naming the abuse by family members and community leaders have made government departments and community groups grapple with the multifaceted needs of victims and offenders. Yet, in the face of this awareness comes the everyday issues of poverty and community survival. Community organizations are hearing everyday that women and families feel poor and powerless. They no longer have faith in any of the systems that were put in place to assist them.

Defining Child-Centred

The concept of child centred is central to our recommendations and lays the groundwork for our analysis. Our approach to a definition of child centred is grounded in our understanding of gender equality and a recognition of the continuum of power imbalances in relationships. From this understanding of equality and power, we draw our expectations of what a child centred approach would look like.

A child centred approach is attentive to the child's physical (including material), emotional, social, and spiritual needs. It involves a recognition of the need to maintain a healthy, trusting relationship between the primary caregiver and the children.

A child centred approach means providing a living arrangement where children can live in safety and security, without emotional, sexual, or physical abuse and without the fear of abuse to themselves or their primary caregiver.

A child centred approach recognizes the child as a whole person, who has needs that must be acknowledged, sustained, and nourished. This kind of approach would realize that children live in families and communities.

They develop within a social environment that extends their lives within a community of school and peers and this takes on more importance than strict adherence to the access rights of the non-custodial parents. For example, on the same day that a child is suppose to spend with the non-custodial parent, he may chose to attend a cub scout activity instead of spending time with the parent.

A child centred approach cannot be realized with notions of gender neutrality. A gender neutral approach assumes the equality of parents in custody disputes. It ignores women's responsibilities of child-rearing, their experiences of surviving violence, and women's financial realities. Many women who need a restriction to access by the non-custodial parent report a rigorous court experience where it appears to be assumed that her concern for providing a safe, secure environment for the child is selfish. Such experiences must be seen as a result of the gender bias that exists in favour of men. Gender neutrality in a system which is gender biased does not create equality.

The decisions made by courts on custody and access do not always reflect the best interest of children. It is for this reason that we felt it was important to place the child's needs at the centre of decisions related to custody and access. Presently, the decisions rendered as being in the "best interest of the child" often speak more about ownership, control, and the rights of parents. The emphasis seems to be on fairness for both parents, not fairness for the children.

The adversarial nature of custody disputes is a negative experience for parents and the aftermath of this often spills onto the child as s/he relates to the primary caregiver and the access parent. It is important to ensure that the decisions made in court weigh the best interests of the child not the needs and rights of parents.

The ideal family does not exist at the time of divorce, especially in divorces that involve custody disputes. When a family unit changes as it does in separation and divorce, there is often a period of grieving and loss. Dividing up the children's time to meet the needs of adults is definitely not a child centred approach.

Most children have the resiliency to survive the change in family structure that divorces bring. They will thrive better in a living arrangement with the primary caregiver that brings a sense of security, provides for their needs, and where an adult takes responsibility for the major decisions in the children's lives. The decisions made on behalf of the children by the primary caregiver must be respected as they have the most information about the children's needs. There will always be times where the non-custodial parent feels the loss of the child especially as an everyday presence. However, we cannot allow children to take responsibility for the emotional needs of parents.

Methods

Using a collective process, questions for two focus groups were designed by the research committee. The first focus group was with women who had personal experiences with custody and access issues and representatives from women's centres and transition houses across Newfoundland and Labrador. Sixteen women attended this group which was held by teleconference. The second focus group was held in St. John's, Newfoundland. Fifteen women attended who were associated with the women's centre; transition house; social services, health, and justice systems; university departments; community-based women's programs; policy departments of the government; and single parents groups. Both focus groups were tape recorded and transcribed.

The information that was collected during the two focus groups underwent content analysis. Manning and Coolum-Swan (1994) describe content analysis as a 'quantitatively oriented technique' (p. 464) that is used to categorize qualitative information. Four major themes were determined by descriptively coding the text, custody and access, relocation and mobility, violence against women and children, and the legal system.

The information gathered during the focus groups, in combination with relevant literature, form the foundation for recommendations to the Special Joint Committee on Custody and Access.

Discussion

In this section, we present information collected during a provincial teleconference and a focus group in St. John's. Through content analysis, the information fell into four major themes: custody and access, relocation and mobility, violence against women and children, and the legal system.

The quotes presented in this section come from the women who participated in the teleconference and focus group. A representative selection of the women's voices is presented. That is, no one woman dominates the discussion. In addition, references are made to appropriate literature.

Custody and Access

During the teleconference and focus group, women were asked for their thoughts on the mandate of the Special Joint Committee on Custody and Access. All of the women were very supportive of creating a system that was truly child-centred. At the same time, women noted that being child-centred did not mean that joint custody was in the best interest of the children.

> "Well the thing that strikes me about this is that it gives a more child centred approach to family law policies that would emphasizes the parental responsibility. Emphasizing parental joint responsibilities means joint custody. To me that doesn't go along with a child centred approach."

> "I think that there is a contradiction to try and take a child centred approach and then to try and emphasize joint custody."

> "If they are trying to make it fair to the parents, how is it going to be fair to the children if they have to spend 40% of the time with one parent and 60% of the time with the other. That may not always be best for the children."

From their experiences, women felt that a presumption of joint-custody was not compatible with a system that is child-centred. Similarly, Smart & Neale (1997) reported that the assumption that maximum contact with both parents is beneficial to the children is often not the case.

When asked about their experiences or the experiences of women they work with about custody and access, women said:

> "With joint custody, the woman still has all the responsibility of the child but the man ends up with all the decision making control. For example, if she wanted to leave her community for a while, because of the joint custody, he has to agree to everything and he still doesn't have to take responsibility for the child, he just gets to have something to say about everything."

> "Joint custody is a control issue, it's not the child that's being controlled, it's the other parent."

> "I think that the issues just satisfies the father in the way that he feels that he is just as responsible to the kids as the mother. But the final decision of what happens to your kids has to fall with one parent. I don't think ex's can get along with ex's and the major decision making sometimes is a very difficult thing....if we can't agree, going back through the courts system and costing me a thousand dollars a day to get in court to say that I want to make this decision for my child because I think that it is best."

> "I think that the court should look at mothers and fathers and say -which one wants responsibility? which one will give their life for the child? Most moms will say that custody is not ownership, it is responsibility for my child and to make the right decision for my child."

> "If two people can't talk to each other and you do have to be civil with each other for joint custody to work. If you can't agree on small issues you can't agree on what is best for your child."

> "Shared custody is a big concern right now for lawyers because it means that the dad has the child 40% of the time or more, and if he can say that....then he doesn't have to pay the recommended amount under the guidelines...every dad now is asking for 40% of the custody."

> "Joint custody is not tied to joint responsibilities.... It's more about the rights of the parent than responsibilities to the child. Rights come with responsibilities."

Women felt that joint custody did not equate with joint parental responsibilities. In Newfoundland and Labrador, many women said joint custody resulted in women having day-to-day responsibilities for their children and men have decision making rights. Joint custody gives non-custodial parents rights without corresponding responsibilities. This is supported by Bertoia & Drakick (1993) who found that claims for joint custody were based on a desire to share in decision making, rather than a desire for sharing in day-to-day caregiving.

With regards to the "friendly parent rule", women said:

> "The 'friendly parent rule' is coercive.... Women are scared of being perceived as unfriendly, even when they know they are acting in the best interest of their children."

> "I have sole custody with access....the only reason I gave their father access is because I would have been seen as the 'unfriendly parent' if I didn't."

Women felt that the 'unfriendly parent rule' was manipulative and intimidating to women. This is particularly true for women with abusive ex-partners (Muzychka, 1994).

Many of the women also spoke about their problems and frustrations getting maintenance support from their ex-partners.

> "A lot of women are frustrated. They feel that the maintenance support agencies are not doing their work. They can't get their monies out of their spouses."

> "I've got a lot of problems with trying to get maintenance. Actually, my ex owes me about $5500.00.... I call back and forth to the courts and get no help from them.... He hasn't seen the child in three years."

> "I sort of have an issue with the whole idea of the courts seeing the children as a commodity. They decide who has a right to have children and the amount of time they get to spend with the children. I think the children can't be used as a commodity. Once you say custody you are implying ownership of some sort."

> "Child maintenance shouldn't be dependent on access. Men need to pay child support because it is their responsibility, not because they see or don't see the kids. They are not buying time by paying support."

Child maintenance and access should continue to be considered separate issues and decided independently by the courts. Inherent with being a parent is the responsibility to provide financial support, regardless of access. The Ad Hoc Committee on Custody and Access Reform (1998) states ..."child support becomes leverage in the intimidation of women by men seeking to divert attention away from their abdication of financial obligations. In these circumstances, men's concern is not for children." (p. 17). Time with children should not to be bought.

With regard to custody and access generally, we recommend:

1. **Legislation should articulate a presumption that custody of children should be with the primary caregiver of the children. This should be based on past history of parenting.**
2. **The primary caregiver should be the person who has the primary decision making authority. This parent has the most involvement, the most experience, and the most knowledge with respect to what is in the best interest of the children.**
3. **Sections 16(10) and 17(9) of the *Divorce Act* which states the 'friendly parent rule' should be removed.**

The current separation of child maintenance and access should be preserved. That is, access should not be tied to child support.

Relocation and Mobility

As was described in the context section, people in Newfoundland and Labrador face many social and economic difficulties. With the collapse of the cod fishery and the resulting massive unemployment in some communities, women may need to move for employment, school, or housing. Relocation and mobility are consequential realities in Newfoundland and Labrador. About relocation and mobility, women said:

> "My ex-husband has seen the kids for two hours in the last two years, yet I want to go away for a work term, and I need his

> permission....Even when men choose not to participate, they still have the right to keep me here."

> "Some of the custody orders have conditions such as you can't leave the area with your children. She can't leave the area but he can leave the province to look for work. She has to go through the courts to get permission to go on holidays to PEI."

> "I've gone to court twice now, trying to move for work. I haven't been able to leave the area because my son is not allowed. His father hasn't been by in years."

Requiring the partner with access to have a say in relocation and mobility issues, creates barriers to making decisions which are in the best interest of the child. In maintaining a child-centred philosophy, recognition must be given to the fact that a child's best interest is linked with the well-being of the custodial parent, not the access parent (Wallerstein & Tanke, 1996). Maintaining the children's relationship with the primary caregiver should be paramount. Women having to relocate because of the social and economic realities of Newfoundland and Labrador should not be penalized.

Women stated that another reason for relocation, was the need to move away from an abusive partner.

> "This man said to his ex that the only way she would be able to leave town is in a body bag, so she dropped the issue because she was so intimidated."

> "[Lisa] was so scared to leave her house, even just to get the mail. Her ex's family would verbally harass her on the street and he was never far away, like stalking her. He was really abusive, so it's no wonder that she picked up her kids and left town. But now, she's the one who is considered wrong. He's [the father] actually trying to find her and get custody. All she was trying to do was protect herself and her kids."

Violent and abusive relationships heighten the need for the primary caregiver to have sole decision making when it comes to relocating. Living in an environment that is safe and free from abuse toward the woman or children is more important than the father's right to access. Abusive men should not be facilitated by the legal system to further control women.

With regards to relocation and mobility, we recommend that:

5. **The decision to relocate should be made by the primary caregiver. This individual is best able to make decisions which are in the children's best interest.**

Violence Against Women and Children

In discussing women's experiences of custody and access, violence against women and children was repeatedly raised. About custody, access, and control women said:

> "There are so many issues of power and control in abusive relationships....kids are used as leverage."
>
> "Most men want to have control over the family unit, they don't want responsibility of their kids."
>
> "Women are losing custody of their kids to abusive men, because the men are manipulative and know how to use the system."
>
> "It is crucial that the justice system be educated about what happens in abusive situations. A lot of the times what the man is trying to do is control the woman."
>
> "A teenager gave custody of her child to the father because she couldn't handle any more of the threatening phone calls, so she just said to the boyfriend - here take the baby."

Women reported that men's attempts to obtain joint custody or liberal access were often more about the men wanting to continue the control or abuse of women rather than about continuing a relationship with the children. Jaffe (1995) found that men who were abusive or controlling were more likely to fight a mother in court for custody as a means of continuing to dominate or abuse.

Control and abuse may not end upon separation or divorce. The Canadian Violence Against Women Survey (Canadian Panel on Violence, 1993) reported that 20% of women who had experienced abuse from a prior partner had experienced violence during or following separation. The severity of violence increased in 35% of cases after separation. "Custody and access disputes often become tools for batterers to further abuse women and children" (Ad Hoc Committee, 1998, p. 11).

Although, the current legal system espouses to be sensitive to issues of abuse and violence, many women spoke about how their experiences and those of their children were dismissed.

> "I came from an abusive relationship and I was told repeatedly by Legal-Aid that this was not an issue to be raised in mediation."
>
> "The guy was convicted of sexually assaulting her [the mother] and it wasn't even brought up in the custody hearing. Because she was assaulted and stalked by this guy, she ended up having a breakdown and went to hospital and this was used against her in court. She went out and got help for her illness."

> "When [Bev] was murdered a lot of the key points were around custody and access. Access was used so he could see her and he use to say that he had as much rights to see the children as she did and he used this to wear her down."

> "At [the transition] house, there was a women who left an abusive situation and he got a custody order where she had to bring the child back to her home community. Meaning that she had to go back into the violent situation."

> "I have been working with a woman who has a child with a man who has been charged with two counts of child sexual abuse and both cases were thrown out because of technicalities. When she went to block his access to their child, because the cases never got a guilty verdict, it was not allowed to be brought up in court. Again, she didn't have good legal services, because there were two police officers willing to go to court to testify how they thought this man was so dangerous, but her lawyer didn't summon them as witness."

Women in the focus groups reported that they were told outright or felt that the fact that they had been abused was not relevant to custody and access. They were not treated with sensitivity or their was little awareness about the dangers and dynamics of violence against women. The rights of fathers were often given priority over the safety of the mother and her children. Abusive men must not be considered satisfactory parents.

Repeatedly, women spoke about the need for courts to reflect the reality that abuse and violence against the mother has direct affects on the child, whether the child was present or not.

> "I think if there is abuse on the woman then right away there should be limits on his access until he can prove otherwise.... In a custody hearing the way the man treated his partner should affect his access."

> "What I have been noticing is that when I have been called as a witness for the woman about what the children have talked to me about, I have experienced many times where the children have been profoundly affected by the way their father has treated there mother. But repeatedly the defence lawyer or the judge will tell me that they only want to hear about situations where the men were directly abusive to the children. I continue to try and make the point that witnessing the abuse of their mother is a direct effect on the children, but they discount that. It is so difficult to convince the court of abuse to the children."

Violence and abuse against the mother is violence and abuse against the child. Children who live in a home with violence or fear of violence, face short- and long-term consequences like fear of abandonment, bed-wetting, eating problems, aggression, worries about their mother, and becoming abusive themselves or accepting violence in future relationships. "Women and children will not be protected until laws and policies stop separating abuse cases out as an exception and start taking a strong stand against abuse" (Ad Hoc Committee, 1998, p. 20).

With regard to violence and abuse against women and children, we recommend:

6. **There should be a presumption that abuse, whether physical, emotional, economic, or sexual abuse of one parent by the other is a primary factor in decisions about custody and access.**

7. **There should be a presumption, that an abusive spouse is precluded from having either custody or unsupervised access to the children.**

8. **Legislation must recognize that there are some cases where no access may be appropriate. These cases would include situations where there is abuse of children, violence against the mother, or such high conflict between the parents that continued contact is toxic for the children.**

9. **As was recommended by the Ad Hoc Committee (1998), before a parent is granted supervised access or is moved from supervised to unsupervised access, there should be clear evidence that the batterer has become non-abusive. Evidence must include demonstrated changes in behaviour and attitudes, which encompass taking total responsibility for the abuse, understanding of the fear and reluctance for contact, and a willingness to engage in access based on the needs of the woman and children. Attendance at an anger management course should not be taken as indicative of these changes occurring.**

10. **Education, training, and re-training is needed for all workers in the justice system including mediators, home assessors, access supervisors, lawyers, and judges around issues of power, violence, abuse, and gender analysis.**

Legal System

Many of the women in the focus groups expressed concerns about the legal system with regards to custody and access. Presumptions adopted by the courts, long waits for court dates, problems with Legal-Aid, problems with supervised access programs, and concerns about mediation were raised. About courts presumptions, women said:

> "Unified Family Court [only available in St. John's] has taken a presumption that there is going to be shared parenting and people know that you can go down and kick and scream...and nine times out of ten, you won't get sole [custody] unless there is a problem....like child abuse."

> "The court thinks that the best situation is a two parent family, mother and father, in all situations, unless there is extreme child abuse."

Women experienced many problems with courts and Legal Aid.

> "Legal aid lawyers don't even have time for mothers.... There need to be Custody Legal Aid Lawyers."

> "Women who have lawyers through Legal Aid which is in Stephenville usually don't see their lawyer until the day of court and another problem here is that we only have court once a month."

> "She lost custody of her child, her ex has full custody and it seems that the reason she lost custody is that she is not as well off as him. He works. She is on social assistance. She had to go to Legal Aid. She was bounced from one lawyer to another because they said they said they don't have time to deal with this case. She ended up getting a lawyer flown in from St. John's [a four hour flight] who hardly spent any time with her and when she went to court she lost custody of her child."

> "Women are going into court having seen their lawyers for a short time before the case appears in courts. Meanwhile, the men's lawyers are totally prepared and have character witness for them. This is because women don't have their own resources and are dependant on Legal Aid. The other thing is that if the husband is using Legal Aid the woman has to find someone else."

> "At Legal Aid, custody and access cases are not a priority with them. Cases can be dragged out for long periods of time, because of this people are getting worn down by the system."

> "They moved the court out of Port Aux Basque. Now women have to travel to Stephenville to see their lawyers and to go to court. Many women just give up because the process is so difficult."

Long waits for court and short preparation times with Legal Aid lawyers were situations common across Newfoundland and Labrador. Women stated that the legal system is not providing the services they need. Decisions like moving the court out of Port Aux Basque (which was a fiscally motivated decision) are having direct effects on women's experiences around custody and access. Similarly, federal government cut-backs to the Legal Aid program and the program's subsequent restructuring, have meant that women are not being well represented in court.

With regard to supervised access, women said:

> "In our experiences, supervised access doesn't last longer than six weeks. Then the abuser has open access to the kids."
>
> "One woman I worked with, he ex-partner was abusive to her and the kids. She got supervised access, but her ex's new girlfriend was the supervisor. That's just not good enough."
>
> "When I was appointed as a supervisor, one guy I worked with tried to convince me that women just didn't understand a father's approach to expressing affection towards a daughter. If I didn't already work with issues around sexual abuse, I might have been manipulated to believe that his actions were okay."

Women's experiences with supervised access was negative. They reported that they need supervisors who are trained and aware of power dynamics in relationships. Further, supervisors should be trained staff of the courts, not members of either parent's family. When supervised access is awarded, women said that the duration is only short-term. As a result of a lack of resources, men who need supervised access have opportunities to hurt their children and in many cases their ex-partners. Supervised access should not be seen as a temporary measure. It should continue until there is clear evidence confirming that there is no need for supervision to ensure the safety of women and children.

About mediation, women said:

> "Women are being forced into mediation and this is a really bad thing. If they refuse, it can be used against them. It is a bad thing if a woman has had a bad relationship with the man - abusive - How is she going to be able to talk openly and freely with him there?"
>
> "Women have felt pressured to go through mediation.... Threatened that court dates will be set back if they haven't tried mediation first."
>
> "Mediation can be very good if both parents want it, but what do people mean by mediation? Are people looking at mediation as how do we get the best responses and I guess that this buys into the whole Joint Custody issue again. We mediate to try and find somewhere in the middle where both parents are going to be satisfied and feel like they can walk away with something good. I think I would have concerns with how that mediation is going to be outlined."

All of the women responded with concerns to the idea of mediation. Although, everyone recognized that there were situations when mediation would be a better option than court, everyone stated that mediation must be a voluntary option. That is, mediation should not be made mandatory.

Women had concerns about the use of mediation with couples where abuse and violence was part of their relationship or in relationships where the woman or her partner were experiencing problems related to alcoholism, drug abuse, or their mental health. Mediation in such situations would facilitate the continuation of power imbalances. In addition, women had concerns about the goals of mediation, the training of mediators, and the lack of standards and accountability.

With regard to the legal system, we recommend:

11. **Custody and access cases should be given priority in the court system.**

12. **Civil Legal-Aid must receive more funding from the Federal and Provincial Governments in order to adequately meet the needs of their clients.**

13. **Supervised access programs must be made available in every jurisdiction. They must be fully funded and sensitive to abuse and violence issues.**

14. **When adequate supervision is not available, women should not be required to provide access.**

15. **Mediation should not be mandatory in family law disputes. Further, there should be no requirement that mediation be considered before access to the justice system.**

16. **Mediators need training, standards, accountability, and clear goals.**

17. **Mediation should never be used in cases where abuse or violence is suspected.**

Recommendations

1. Legislation should articulate a presumption that custody of children should be with the primary caregiver of the children. This should be based on past history of parenting.

2. Primary caregiver should be the person who has the primary decision making authority. This parent has the most involvement, the most experience, and the most knowledge with respect to what is in the best interest of the children.

3. Sections 16(10) and 17(9) of the *Divorce Act* which states the 'friendly parent rule' should be removed.

4. The current separation of child maintenance and access should be preserved. That is, access should not be tied to child support.

5. The decision to relocate should be made by the primary caregiver. This individual is best able to make decisions which are in the children's best interest.

6. There should be a presumption that abuse, whether physical, emotional, economic, or sexual abuse of one parent by the other, is a primary factor in decisions about custody and access.

7. There should be a presumption, that an abusive spouse is precluded from having either custody or unsupervised access to the children.

8. Legislation must recognize that there are some cases where no access may be appropriate. These cases would include situations where there is abuse of children, violence against the mother, or such high conflict between the parents that continued contact is toxic for the children.

9. As was recommended by the Ad Hoc Committee (1998), before a parent is granted supervised access or is moved from supervised to unsupervised access, there should be clear evidence that the batterer has become non-abusive. Evidence must include demonstrated changes in behaviour and attitudes, which encompass taking total responsibility for the abuse, understanding of the fear and reluctance for contact, and a willingness to engage in access based on the needs of the woman

and children. Attendance at an anger management course should not be taken as indicative of these changes occurring.

10. Education, training, and re-training is needed for all workers in the justice system including mediators, home assessors, access supervisors, lawyers, and judges around issues of power, violence, abuse, and gender analysis.

11. Custody and access cases should be given priority in the court system.

12. Civil Legal-Aid must receive more funding from the Federal and Provincial Government in order to adequately meet the needs of their clients.

13. Supervised access programs must be made available in every jurisdiction. They must be fully funded and sensitive to abuse and violence issues.

14. When adequate supervision is not available, women should not be required to provide access.

15. Mediation should not be mandatory in family law disputes. Further, there should be no requirement that mediation be considered before access to the justice system.

16. Mediators need training, standards, accountability, and clear goals.

17. Mediation should never be used in cases where abuse or violence is suspected.

In addition, we endorse the briefs submitted to the Joint Committee on Custody and Access by the National Association of Women and the Law and the Ad Hoc Committee on Custody and Access Reform.

We encourage that whatever changes that are made to federal legislation, will be mirrored in provincial and territorial legislation.

Conclusion

The Provincial Association Against Family Violence and the Provincial Advisory Council on the Status of Women are pleased to have had this opportunity to present our visions to the Special Joint Committee on Custody and Access. For many years, women have not felt protected by the courts but rather that their interests were being placed in further jeopardy. Now that the Federal Government is ready to hear our realities and recommendations, we are hopeful that the vulnerability of women and children in custody and access disputes will be validated and dealt with.

We are adamant that the current justice system is not good enough. It is not sensitive to the power imbalances in relationships, the rights of mothers and children to safety and protection, nor the magnified problems in rural parts of our country and province.

We have based our concept of child centred on our values and beliefs and the experiences of women who told us that to be truly child centred means responsibilities and willingness to place the needs of the children first, before personal needs of the parents.

We are concerned that so many Federal Government decisions are fiscally driven. There are feminists who fear that the work of the Joint Committee may speak more about father's rights than mother's realities of caring for and protecting children. Yet, we are hopeful that by hearing the experiences of women and taking more time to design a child centred approach, the Federal Government will finally bring about the changes that are based on a recognition of inequality and the intrinsic value of children in Canadian society.

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INTRODUCTION

On June 14, 2001, the Northwest Territories Department of Justice sponsored an in-person consultation on custody and access issues. The purpose of the session was to get input into possible legislative changes and improved services to parents and children dealing with separation and divorce. This consultation was intended to complement, not duplicate, the Federal-Provincial-Territorial Family Law Committee's national consultations on these issues.

The meeting was also an opportunity for the territorial government to get northerners' views on how it can help parents, lawyers and judges focus on what is best for children when making decisions about separation and divorce. Mike Bell, of Inukshuk Management Consultants in Yellowknife, served as the facilitator. A list of organizations that participated is attached as Table 1.

The session opened with two brief presentations. A representative of the Department of Justice Canada explained the background for the consultation process. The representative of the territorial Department of Justice provided some background information on programs and services and some statistics on separation and divorce in the Northwest Territories.

ABOUT THIS REPORT

This report provides a summary of the discussion and recommendations. It is divided into three parts:

- the "mind map" outlining the major trends and issues affecting custody and access;
- the "open space" discussions on specific issues and areas of concern to the participants; and
- the recommendations arising out of the discussion.

THE "MIND MAP" ON TRENDS AND ISSUES

During the first session, participants developed a "mind map." The purpose of this was to identify some of the major trends and issues affecting custody and access.

In this brainstorming process, participants indicated their major areas of concern. These were then written on a large blank paper covering a wall—on lines extending out from a circle in which was written "Trends and issues affecting custody and access,"—as follows.

- Roles, rights and access of grandparents: cost implications; non-responsible system.

- Small communities: can local resources be used? How?

- Education of communities: expectations; families.

- Barriers to justice: Dene, Métis, Inuit children; systemic discrimination in judicial systems; Dene self-government.

- Poverty discrimination facing families: legal process to qualify for income support; don't qualify for legal aid; the working poor.

- Enforcement: no RCMP policy; problems with Ordinance; custody orders aren't clear; maintenance enforcement for people making deals with parents; difficulties with payment; enforcement especially between jurisdictions; schools and agencies trying to interpret unclear custody orders; inadequate powers of maintenance enforcement; money not used for maintenance; interjurisdictional cooperation; enforcement does not adapt to changing economic realities; need for more flexible change mechanism; boom-bust issues; maintenance enforcement.

- Proper forum for decisionmaking: non-judicial approaches; community-based approaches; elders' roles.

- Impacts on children in small communities: no services for healing process; small communities; court process traumatizing; no treatment programs for children; hard on grandparents.

- Refusal of federal government to provide resources for legal aid: money for agency; lack of attention.

- Cost of access when parents live far apart.

- Role of social workers and how they are put in the middle: impact of witnessing violence; safety of children; family violence; grandparent abuse.

- Definition of spouse; family law in same-sex relationships; legislation doesn't protect all children.

- Who can alter the order? The 40-60 rule; should access be taken into consideration; review guidelines for N.W.T.; decisions on access based on support guidelines; decisions on level of support based on access.

- Lack of dollars for supervised access; lack of services; lack of consistency; lack of space; need third-party drop-off for children.

- Parent education: parents focus on their rights; parents not focused on children; custody and access disputes turn into child protection issues; false reports to punish other parent.

- Federal legislation: terminology; shared parenting.

- Other dispute mechanisms (mediation): women not on same level in process; dynamics of violence.

SYNTHESIS

Most of the trends and issues appear to fall into the following broad areas of concern.

- *Problems with existing procedures, especially with unclear custody areas.* Concerns in this category included inconsistencies in enforcement, inflexible support payment requirements that do not take into account the boom-bust cycle of northern employment, and agencies (schools, social work agencies, for example) caught in the middle.

- *The lack of services, especially in smaller, more remote communities.* This category includes the general lack of services, the realities of poverty and unemployment, the lack of funding for legal aid and other services such as supervised access, and the cost of access because of travel requirements.

- *Barriers to custody and access caused by the limitations of existing legislation or its interpretation.* This category includes systemic discrimination in judicial systems against the rights of Aboriginal peoples, failure to adequately take into account the realities of culture, failure to acknowledge and recognize the rights of same sex couples, failure to acknowledge and recognize the rights of grandparents, and lack of knowledge among the general public of existing legislation and its practical applications.

- *The lack of non-judicial dispute resolution mechanisms.* This category includes the lack of access to legal services, especially in more remote communities, the need for more mediation, and the need to use more traditional forms of dispute resolution that are culturally responsive (elders and respected community leaders as mediators).

- *The emphasis in existing legislation on parents' rights rather than the rights of children.*

OPEN SPACE: SMALL GROUP DISCUSSIONS

After completing the mind map, the session entered an "open space" stage. The facilitator explained the open space procedure and participants were invited to set the agenda for the rest of the day by posting discussion topics on the wall. The members of the group then signed up for discussions in their area of interest. In addition to facilitating their own discussion groups, group leaders had to ensure that someone in their group recorded the discussion. There were 12 small group discussions.

ROLES, RIGHTS AND RESPONSIBILITIES OF GRANDPARENTS

Discussion

- Intrusion in elder years of having to take care of grandchildren.
- Parents will not allow grandparents to see grandchildren.
- Grandchildren with grandparents, but court order does not include payments to them.
- Current pensions cause financial hardships (get clawbacks if they receive money for looking after grandchildren).
- Rights for grandparents when parents separate (to still be able to see grandchildren).
- Grandparents as victims of break-ups.
- More information available to grandparents on how they can have access to grandchildren.
- Recognition of the role that grandparents play (religion, upbringing, etc.).
- Grandparents can be role models for the community.

Recommendations

- Laws should reflect that grandparents have rights.
- Grandparents should be considered as suitable guardians for children in custody and access situations.
- Pensions: grandparents should not be penalized because they may receive money for caring for grandchildren.
- Court orders must ensure that money goes to where the children actually are.
- Elders and grandparents should have input at the community level into decisions concerning the welfare of the child affected by a break-up.
- There must be appropriate ways to develop and distribute information, along with appropriate funding.

ROLE OF TECHNOLOGY IN ACCESS ISSUES

Discussion

- Technology as a means of establishing and maintaining contact.
- Public information through technology:
  - legal rights, services;
  - Internet support groups, information clearinghouse; and
  - Internet groups would provide a means of support.
- Use of technology for maintenance order enforcement:
  - greater capacity to trace people;
  - direct deposits of enforcement payments to parents; and
  - face-to-face interaction through video conferencing.

Recommendations

- Technology would help alleviate the high cost of access for parents far from their children.
- Technology can help with interpretation services in the legal process; access interpreters and witnesses can broaden the array of evidence through things such as video conferencing.
- Video conferencing will facilitate presentation of broad background evidence of family law cases in court.

MAINTENANCE ENFORCEMENT ISSUES

Discussion/Recommendations

- Child support guidelines.
- Maintenance enforcement orders (MEO)—child support in regards to social assistance and Quebec MEO; how they deal with orders and collecting.
- Child support: both parents are responsible for the child.
- Orders made that one of the parents cannot afford and what happens upon the death of one of the parents.
- Instances when the mother gets the child support money, and then spends it on other things (drugs, for example).

- One mother can get a child support order for three different fathers.
- MEO: will contact the parents and try and help them with their orders and try to work out the problem, such as when one parent is being harassed by the other (mother or father).
- MEO: what they can do and what they cannot do (for example, making an order when a client loses his job); how MEO can help a parent with someone who is behind in his order (MEO is able to reduce it until that person is on his feet).
- Legal aid will help to vary orders in either way.
- MLAs: how to approach for help, changes in the system, help with funding.
- Payment in kind? For example, hunting for food instead of sending money, receiving which may be equally helpful to a family (Native custom).
- MEO: *Privacy Act* and information that is on file.
- MEO: getting the money when it should be gotten.
- MEO: getting payment from another jurisdiction—order to be sent where? Who is he working for? If no money is received and MEO knows where client is working, they will do a wage attachment with the company in the other jurisdiction until the other jurisdiction takes over the file.
- MEO: accepts Visa, cheque and cash debit direct from accounts.
- MEO: in cases when someone does not want to work, MEO will bring default hearing.

CURRENT TERRITORIAL LEGISLATION DOES NOT RECOGNIZE ALTERNATIVE FAMILIES

Discussion

- Gays and lesbians are steps behind.
- Current legislation does not include other relationships beyond heterosexual couples.
- Homosexual couples have no rights with regard to child custody and access.
- Historically, courts have viewed homosexuality as a reason for "non-custody."
- Other alternative relationships (e.g. grandmother, sisters, aunts) are not recognized either.
- There is no other method to access rights in this matter.
- Whether or not couples want to be "married" or "spouses" is *not* the issue. The issue is equal access to the law and rights.

- Issues of self-government: laws need to be addressed by Aboriginal communities when they devolve their own jurisdiction.
- Legislation will be changed, either through legislation reform or via court direction (Charter challenge).
- The importance of church influence in influencing legislation.
- Discrimination against homosexuals in family law issues.

Recommendation

- Amend territorial legislation to make the "spouse" definition more inclusive.

ALTERNATIVES TO THE COURT PROCESS

Discussion/Recommendations

- Discussion on collaborative law process.
- Difficulty in small communities: no lawyers.
- Justice committees are expanding into community justice committees and using more traditional methods of dispute resolution.
- Educate lawyers about traditional dispute resolution methods.
- Some people do not want to use mediators. They want to avoid sitting with their ex-partners.
- Knowledge about availability of mediation.
- Knowledge about incidents of mediation (requirements, etc.; details may be lacking).
- People see court on TV and think that it is the only option.
- Should mediation be mandatory?
- Training for mediators, including crosscultural aspects.
- Conditions and terms for mediation—not all can be forced into it.
- Mediation with a parenting course.
- Involvement of other agencies prior to court processes.
- Interim situations are often crisis situations—how are these dealt with?
- Use justices of the peace to make interim orders?

- Parenting education prior to mediation.
- Who mediates in small communities?
- Access for all communities.
- This is more than just a justice issue; involves many other government departments.
- Tribunals to adjudicate, rather than courts, or another body. Judicial review available.

DIVORCE AND SEPARATION: EFFECTS ON CHILDREN AND THE ROLES OF PARENTS

Discussion

- In the child's best interest; courses should be available.
- School curriculum should include courses on healthy lifestyles and separation and divorce issues.
- Attitudes on issues such as divorce.
- Training for people in the community on issues of separation and divorce.
- Educating the community on issues of separation and divorce.
- Children learn what they live.
- Values and customs are passed on to families who in turn pass them on to their children.
- Blended families and marriages can sometimes cause difficulty.
- Education of and awareness among children.
- Education and awareness for couples intending to marry, and on the roles and responsibilities of being parents.
- Education and awareness for couples separating or divorcing and for their children.
- Services needed for community awareness.
- Services such as a 1-800 help-line for children of parents who are going through separation or divorce.
- Mandatory courses by the Department of Justice or the courts, which parents must attend and receive a certificate.
- Cycles of violence and abuse need to stop.

- Better services needed for children and youth.

- Cultures, values and traditional teachings are important.

Recommendations

- Mandatory courses from the court—which divorcing parents must attend—on information related to issues of divorce effects on children.

- School curriculum should include courses for students on healthy lifestyles and issues concerning separation and divorce.

- Use elders in the community and the traditional teachings on marriage and parenting.

- Promote awareness and education for couples prior to marriage and on the roles and responsibilities of parents.

- Set up a help-line (1-800) for children of parents who are divorcing.

- Have all justices of the peace and ministers who perform marriages provide at least three educational sessions to couples before they marry.

ENFORCEMENT OF ACCESS AND CUSTODY ORDERS

Discussion

- Three ways to enforce orders: contempt of court, charge under Criminal Code, and charge of abduction/kidnapping (jail up to 10 years).

- If someone breaches an order, call the RCMP. (However, the RCMP can only enforce an order when the judge has included an enforcement clause in the order. The RCMP also has no power to investigate.) Determining that kidnapping has occurred is difficult; intent is a key factor (for example, if one parent is trying to prevent the children from seeing the other parent). There are two types of kidnapping: the non-custodial parents takes the children during access time; or, when there is no order, the parent visits the children and takes them.

- How can we best encourage people to agree to orders and follow them?

- How do we find an easy way to enforce orders?

- Terms are too vague; "liberal and reasonable access" means different things to different people.

Recommendations

- Draft a proper order—specific and detailed.
- Mandatory review of custody order six months later.
- Legislate required information for custody orders.
- Can there be a review officer who reviews the order after six months and decides whether it should go back to court or not? Would the dynamics of the relationships effect this? Would a man just say the other is okay even when it isn't?
- Establish guidelines for every custody order.
- Some couples just agree to the orders.
- A child support order is very specific; make child custody orders the same.
- But if too specific, there will be trouble, people will feel too controlled.
- Set up a "children's house"—one parent in house at a time, each parent moves in and out of house.
- Parenting after separation courses should be mandatory. After taking the course, a person will be more apt to agree to the custody arrangement.
- If people can reach agreement with a mediator, lawyers should stay out of it; the agreement should stand. Now, often lawyers will say they don't like the agreement and the case still goes to court.
- There should be compulsory mediation for couples for whom it would work and with no lawyer involvement.

60-40 CHILD SUPPORT ROLE

Discussion

- Shared custody is more expensive than sole custody, although the court views it as cheaper.
- Usually one parent carries the financial burden.
- Children are often caught in a "financial war," with one parent fighting for 61 percent custody time and the other fighting for 40 percent time.

- Section 9 of the child support guidelines need to provide more direction:
  - What is the history of financial responsibilities?
  - Who pays for what?
- Shared custody causes disagreements where there were none before.

Recommendations

- Section 9 requires more direction to the courts about what factors to consider, who has assumed financial responsibilities, for example.
- When the children spend approximately the same amount of time with each parent, the judge orders something other than table amount. Judge to review all circumstances.

ACCESS TO SERVICES

Discussion

- Accessing legal aid is mostly done by telephone. Many people are not aware of services. Family violence is a huge issue. Not clear where to refer people.
- Committees are not set up with Health and Social Services.
- Social workers may not be accepted within the community.
- Access in small community. Is there a neutral place to go to?
- Lack of knowledge of service providers.
- Should there be a territorial directory of key contacts and how they can be reached?
- Adult literacy is a problem (therefore, what good is a directory?).
- There are 42 family law programs and services in the N.W.T., costing millions of dollars a year. Who knows about them?

Recommendations

- Identify the existing services.
- Re-examine the funding mechanisms that discriminate against small communities. Policy advisors and funding bodies must take small communities into account (need a per capita formula). They must be considered in a network, because if a problem arises, it has a ripple effect.

- The federal and territorial governments do not understand the needs in the communities. They should consult with the communities, or give the funding to the region, so the money is put in the right place.

- Programs go to the communities with criteria attached, and people are asked to apply.

- Provide resources for people with access (poverty is a key factor, and many people have no financial resources). Consider what happens when one parent moves away. Could look at levels of income. These issues override what is in the best interests of the child.

- Look at the international convention on the rights of children, as well as Aboriginal conventions.

- Need for clarification of overall problems in N.W.T. is acute. It is increasingly difficult to know what the territorial government should be doing for local governments and communities, especially Aboriginal communities (Aboriginal governments are evolving in different forms).

- Allow for input by the people. Aboriginal people must be allowed to voice their concerns. People are "boxed in" by legislation and are becoming divided.

- Need to seek unity and common ground through consultation and discussion.

- Need to address the fact that negotiations for devolution and self-government are bogged down.

- Need more support for children in general; too many are being ignored.

- Need interim measures for children. Schools could give a resource list to children.

- Need ways to help children access treatment; many are waiting. Some children are walking time bombs.

- Pressure should be exerted for intervention money for treatment and preventive measures (youth organization funding).

- Push for mobile treatment for children and families.

- Services should be accessed outside of the community.

- Need more public pressure. Oil and gas is coming up and children are our future; the cycle is going to continue.

- Native Women's Association looked at mobile treatment.

- Mentorship? Forum should be developed to identify and examine social issues resulting from oil and gas industry.

- Adults can go for follow-up but youth cannot.
- Should be consulting with youth, since there is going to be paid work for youth.
- Abduction: no help unless you have the dollars.
- Raise awareness and educate people about their rights so they can make choices. Legal education needed for the public and judges and lawyers.
- Some judges talk down to people. The court personnel as a whole should be educated as well, particularly on the dynamics of small community living.
- Need genuine consultation with children on matters of custody and access.
- Grandparents and parents try hard to keep things going, but sometimes judges order contrary conditions.
- A neutral party is needed to help with investigations when custody disputes come up. (In Newfoundland, a home study is done by the social worker in a custody dispute.)
- Ask the kids about the process (i.e. what is good or bad about how the parents handled the dispute?).
- Have N.W.T. youth participate in the federal consultation with the youth (i.e. youth from different backgrounds: sexual abuse, family violence, etc.).
- Circuit court takes long time to come around; anxiety goes on much longer.
- Shared custody works better when both parents live in same place (parents often will not sacrifice this for the children).
- Legal divorces? A lot of parents are not married, so many children have no access to services.
- Maintenance—parents can try to get support but custody and access is an issue that single parents do not know about. Even maintenance needs to educate the public.

PARENT EDUCATION

Discussion

- Status of Women Council of N.W.T. is interested in having parenting education for couples after they separate.
- Family law lawyers have experience dealing with parents who use children during custody disputes.
- Child Protection Worker often caught in the middle of custody disputes when parents sometimes allege child welfare concerns between parents.

- Educating parents and children about their responsibility after separation.

- Parents need to know that children should not have to choose between them.

- Who should offer courses to parents?

- Responsibility should be on everyone; however, it may not be a good idea to have Health and Social Services boards involved since they also do child protection work.

- Programs (such as to educate parents) should be done by a contractor (e.g. Status of Women Council, not by Health and Social Services).

- Parenting courses and other courses should be offered to parents before they end their relationship.

- Courses should be mandatory upon separation and divorce.

- School curriculum should include courses for students on healthy lifestyles, relationships, communication, parenting, etc.

- Issues such as Fetal Alcohol Syndrome and Fetal Alcohol Effects will cause difficulty in parenting.

- Services should be provided before and not after separation and divorce.

- Services should be coordinated.

Recommendations

- Coordinate services and funds. This should happen through the system.

- What is "In the Child's Best Interest"? Should be advertised and communities should have access to this program.

- Make parenting education available to the whole of the N.W.T.

- Government-wide strategy needs to happen.

- Social enveloping.

FAMILY VIOLENCE, CONVICTIONS OF CHILD ABUSE AND SEXUAL ASSAULT

Discussion

- Most of our clients are not affected by the *Divorce Act*, since they are not married.

- "Child's best interests" is such a catch-phrase. Who determines this? How is this different from "best practice"?

- Just because someone does not get convicted of sexual abuse does not mean that he or she did not do it.
- What is the definition of *violence*? It needs to be broad and include all forms of violence. Is it only one line in our current legislation?
- What governs common-law relationships?
- There has to be some room to look at each case individually.
- By doing this individually, will it just get dumped onto someone or some department (i.e. a social worker).
- Do not have the social worker (who is supposed to help) in situations of family violence also make decisions about custody.
- We need community education.
- Why move mom/kids from their home and not the perpetrator?
- Systems are not working together.
- We need a risk assessment in cases alleging violence and abuse.
- What about a review period for court orders? How well is it going? Is this working for everybody? The only way to deal with changes now is to go back to court.
- Educate the bar and judiciary. Unclear orders often make no sense.
- RCMP needs education in matters of family violence as well.
- Education/services for students (most are available only in Yellowknife). Need more in the communities.
- How are common-law relationships recognized? How are they dissolved? Who is responsible for the children in these situations?
- Access to the law/justice system is difficult and sometimes impossible outside of Yellowknife and a few other larger communities.
- Telephoning a lawyer long distance can be very costly.
- People (women more often than men) sometimes are passed through the system without really being helped.
- Access to legal aid may be difficult and the cost of legal services can be prohibitive.

- People applying for access orders in cases of family violence should be able to expedite court services quickly.

- RCMP need a clear policy about when they should get involved.

- Violation of a court order is a criminal offence, and there needs to be a community protocol so people know who to call for what and when. There are advantages as well as disadvantages to small communities—some communities have a "community response" and it works well.

- Third-party drop-off space would protect a child from potential violence.

- Mothers are often left to figure out who will supervise visits, which puts more stress on her and the children.

- A special type of court ("family violence court") is needed, as well as dispute resolution mechanisms outside of courts.

- Most communities have justices of the peace and they should be trained in family issues/family law so they can hear custody and access issues.

- There is concern that courts are "too soft" on family violence offenders.

- Rely more on community justice, even for interim orders, and for supervising workers and managing costs, etc.

Recommendations

- Review custody orders.

- Insist on a "pre-report" to the court regarding family, situation, etc.

TERMINOLOGY

Discussion

- Changing the name doesn't change what you are basically doing.

- Recognition of orders for enforcement under international treaty and for travel purposes may become difficult.

- Current wording has a win/lose connotation.

- Use other terms to clarify what custody and access actually require of a particular parent.

- Need further definition of *custody*.

- The key is really that the back-up services must be there to enforce and protect rights no matter what one calls them.

- How does changing terminology affect the meaning and use of precedence in N.W.T. law?
- Rights versus responsibilities or rights *and* responsibilities.
- Keep the current wording and provide more definition about what it means.
- Key is changing the mind set.
- Consultations lack gender orientation. The reality is that mothers have access and chase after support—and this is ignored.
- Look for alternative ways to resolve issues.
- Every case is different.
- Guidelines tie-in—has impact on relief under Guidelines.
- No matter what you call it, you don't capture the essence of parenthood.
- The details are what matter, not how you define it.

RECOMMENDATIONS

In the last session of the day, the participants gathered in plenary. The facilitator asked participants to reflect on their small group sessions and indicate dominant themes or areas of concern about which they might like to make specific recommendations. They decided on the following recommendations.

- Increase awareness of custody and access issues. Introduce courses for parents and families across the N.W.T. Seek community input when developing the courses. Make courses compulsory.
- Make sure there are services (and the resources to provide them) to back up the court system.
- Make the legislation more inclusive. Clarify the definition of spouse. Have the legislation recognize the implications of adoptions.
- Have a mandatory review of all custody orders after six months. Spell out an understandable review process.
- Amend legislation to recognize the rights of grandparents.
- Institute a 1-800 number for children facing family break-up.
- Provide education programs for judges so they will respect Dene culture and become more sensitive to Dene history, the dynamics of different communities, and the differences among Dene peoples.

- Develop custody orders that are clear, easy to understand, and provide appropriate access. Make sure schools and agencies understand the orders.

- Consider family violence in court decisions, especially when there is evidence of violence but perhaps no conviction.

- Make sure all changes to legislation and procedures are understood in a consistent manner across all government departments.

- Consider alternatives to the court adjudication process. Consider making these alternatives mandatory. Introduce a unified family court and provide options within the court system.

- Institute mandatory courses for parents considering adoption and make them mandatory prior to court appearances.

- Improve legal education for the public so that rights and responsibilities are better understood.

- Make sure the cultural rights of children are respected in the court processes.

- Improve interpreter services and make them more available.

Table 1: Participating Organizations

Beaufort Delta Legal Services
Canadian Bar Association, Family Law Subsection
Dene Nation
Denroche Brydon
Dogrib Community Services Board
Education, Culture and Employment, Government of N.W.T.
Family Support Centre
Gullberg, Wiest, MacPherson & Kay
Hay River Community Health Board
Health and Social Services Board
Health and Social Services, Government of N.W.T.
Inuvik Regional Health and Social Services Board
Justice, Government of N.W.T.
Legal Services Board
Lutselk'e Health and Social Services
Native Women's Association
N.W.T. Seniors' Society
Out North
Status of Women Council of N.W.T.
Yellowknife Health and Social Services Board
Yellowknife Women's Centre
YWCA, Alison McAteer House

INTRODUCTION

Workshops on custody and access were held in Halifax on June 27, 2001, and in Sydney on June 28, 2001. Thirty-five participants were involved in the workshops. Table 1 lists the participating organizations.

The following topics were discussed at the Nova Scotia workshops:

- best interests of children;
- roles and responsibilities of parents; and
- meeting access responsibilities.

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

What are children's needs when their parents separate?

Participants suggested that there must be a clear definition of what is in the best interests of the children. If a clear definition existed, judges would not have to determine a definition specific to each individual's situation. Participants said that it is necessary for the *Divorce Act* to set out factors that parents, service providers and judges should consider when determining the best interests of children, but that no single factor should be given priority over others. Most importantly, the uniqueness of each child must be reflected in any factors considered. The child's life should continue to be stable after separation and divorce. Participants discussed many factors that would help create such an environment, as set out below.

Emotional Support for Children

Emotional support for children should be readily available during and after separation or divorce. There is a need for additional resources to provide these services. Participants suggested that a children's advocate, working with parents and children, could help determine and focus on the best interests of children. The children's advocate could also provide a voice for children in court when required.

Children Expressing Their Opinion

Children should be able to express their preferences in discussions about their future. The significance of these contributions would depend on the children's ages, level of maturity and emotional stability. In many situations, children's view are not expressed or evaluated when changes occur in their lives. A review of the parenting agreement would ensure that it is still meeting the best interests of the children. This review should be mandatory and periodic

Education

It is in children's best interests for them and their parents to have access to educational resources at all stages of the children's development. Not only should parents and children be educated but also those making decisions that affect them. It was suggested that judges be more informed about the best interests of children in various situations.

Time as a Constraint

Timely decisionmaking is an important factor for children. Children's perception of the length of the process is different from that of the parents. The instability that would exist for children throughout a long separation or divorce process is not in their best interests. There should be sufficient resources available to ensure that the process can be not only informed, but also timely. The resources provided should include sufficient legal aid, parental capacity assessments and children's needs assessments.

ROLES AND RESPONSIBILITIES OF PARENTS

What factors enable good parenting after separation or divorce?

Participants came up with many factors that would enable good parenting after separation and divorce. Participants said that ensuring that people gain a better understanding of the responsibilities and obligations of parenting prior to becoming parents would be the ultimate way to create good parents. Participants said that education was the primary factor in enabling good parenting. Throughout the decisionmaking process the best interests of children must be considered, but this is often ignored when adversarial conditions exist between parents. Good parents put the children first. The creation of a parenting arrangement as soon as possible after divorce or separation would allow each parent to understand his or her role from the outset. Participants suggested that the community should provide support to parents in difficult or adversarial situations and encourage a community-based approach.

Education

Participants said there was a need for parental education prior to and after separation or divorce. It was suggested that a lack of parenting skills contributes to unstable parenting. It was strongly suggested that if education started in primary or secondary school, it would lead to more stability in relationships and would therefore reduce possible parental conflicts after separation or divorce. In addition, people should be required to take a pre-marriage course that would cover parental responsibilities, as well as conflict resolution and communication skills. There should also be services available for developing conflict and anger management skills. These services should be readily available in various languages, taking into consideration different cultural backgrounds.

Before or after separation or divorce, skills-based divorce education courses should be offered that would provide the necessary services to parents, including addressing power imbalances and developing communication skills to reduce the number of high conflict separation or divorce cases.

Putting Children First

Participants recognized the importance of putting the children's interests first when making any decisions. After separation or divorce, the timeliness of the process is very important for the best interests of children. What may seem like a short period to parents may seem like a lifetime to children. If there were more resources for the parents at the time of separation or divorce, the amount of time it takes parents to make a reasonable arrangement would decrease. If there were mandated or legislated timelines, parents would be encouraged to come to a more rapid solution. Workshop participants said that there are not enough resources providing information to help parents.

It would be best for children if they knew from the outset where their primary home would be. It was suggested that if a primary caregiver existed prior to separation or divorce then, if possible, as an interim measure the primary caregiver should continue as the primary custodial parent until a co-parenting arrangement can be set up (which should occur as quickly as possible). It is important for children to continue in a similar lifestyle as before the separation or divorce. As the children's ages and lifestyles change, their best interests may differ. It is important to consider and review the situation as often as possible to determine that the children's interests are always being considered.

Creating a Parenting Arrangement

Participants felt strongly that parents should develop an amicable relationship as quickly as possible, which would benefit the children. It must be recognized that the relationship between parent and child is separate from that of parent and parent. A parenting plan or agreement should be created and followed as closely as possible by both parents, and it should encourage participation by both parents in the lives of the children. The children should not be isolated in a traditional family unit, but be encouraged to interact with extended family whenever possible. Many participants emphasized the need for parenting plans that encourage and facilitate contact with grandparents and other extended family members.

Community-based Approach

Participants suggested encouraging a community-based approach to enable good parenting after separation or divorce. A community-based approach, either formal or informal, would help those seeking or requiring assistance and support easily find the information they need. An informal support system would provide parents who are intimidated by a more formal system with support as required or desired. Currently, a long waiting list for formal services in some communities precludes getting support when needed. Moreover, a community-based approach would provide assistance to both parents and children. Children should be allowed and encouraged to interact with other children in similar situations.

A community-based alternative dispute resolution method would help parents developing parenting agreements and reduce dependency on lawyers or the courts. The courts may assist when required in, for example, high conflict situations after all community-based methods have been exhausted.

Parenting Coordinator

Participants advocated having a parenting coordinator to help parents implement and follow predetermined parenting agreements. The parenting coordinator would keep parents focused on the factors that allow good parenting in difficult situations and on the best interests of children. A coordinator would be available to provide problem-solving advice whenever required.

Were you aware of the services offered in Nova Scotia?

Although the participants, for the most part, were aware of the services offered in Nova Scotia by government, they believed there were neither enough nor adequate services to meet the needs of parents and children. There is less information on the availability of the community-based services.

What suggestions do you have for improving awareness of the services?

Participants said there should be a more effective way of informing individuals about available government and community-based services. It was suggested that the Internet be used more effectively to advertise and increase awareness of services. In addition, it would be more effective to have information delivered or presented in the community, instead of having people look for services that may or may not be available. One suggestion was to have an open kiosk at frequently visited locations, such as shopping malls, community centres and medical centres, with pamphlets describing the government and community-based services available. Also, concern was expressed about the lack of services outside main urban centres such as Halifax and Sydney.

Participants suggested that services be improved to account for existing cultural differences; individuals seeking assistance often face language barriers

Additional Services That Should be Available

Participants suggested that services in addition to those the government and community services already provide are required to help separating or divorcing parents.

Child Care Services. Participants expressed a need for additional child care services, especially ones that could provide counselling, informal advice, and a safe and comfortable place for interactions with other children in similar situations. Participants felt that children are generally excluded from services, that there are very few, if any, child-centred services available.

Divorce Mentors. It was suggested that divorce mentors could help children and parents with separation or divorce arrangements. Individuals on the verge of separating or divorcing could observe low conflict divorces and separations as a learning experience. The mentors could provide advice about the services these parents and children found useful and, in general, facilitate a low conflict separation or divorce.

Legal Advice. Participants said that the services currently in place do not provide legal advice in a timely manner. It was suggested that paralegals are less costly and better able to provide timely advice. By incorporating paralegals into the system, stress would be taken off lawyers, and the long lists of people waiting to talk with lawyers could be reduced. Paralegals could discuss the services provided in the community, both by government and community organizations, and suggest the most suitable options for the individual's situation. The paralegals could suggest counselling for the parents or children, and thus help reduce the confusion and frustration among separating or divorcing individuals that often leads to high conflict.

Would the use of terms other than *custody* and *access* make a difference in the way post-separation parenting arrangements are determined?

Participants generally preferred the use of terms other than *custody* and *access*, which set up adversarial roles in parenting. The term *custody* often implies ownership, and *access* often implies limits to parenting ability. With this terminology, one parent is often seen as the winner and the other as the loser. However, if new terminology were introduced, the new terms must still reflect the reality of the situation. Moreover, use of the current terms would be difficult to eliminate, as people feel they understand them.

Overall, participants said that *shared parenting* was a suitable term, but not appropriate for all situations and less flexible than other options. In this regard, other comments were as follows:

- Shared parenting is related to joint custody, and thus may lead to conflict and a power struggle.
- Shared parenting may be in the best interests of the children in most situations, but when the parents do not want the responsibility, forcing contact with children would not be positive for the children.
- The question would remain of who would have the onus of showing that shared parenting would not be in the best interests of the children.
- Shared parenting does not recognize the dynamics of all situations.
- For some participants, the term *co-parenting* was preferable to *shared parenting*, since it does not necessarily denote an equally shared parenting relationship.
- The term *access* should be replaced by the term *parenting time*, a less obtrusive term.

The participants suggested that the term *parental responsibility* would be the most workable, and could be easily adapted to the various parental situations that may exist. When a less balanced parental agreement is required, the term would reflect the situation, thus further defining the roles of each parent in the parenting plan. Participants made the following comments:

- The concept of parental responsibility could incorporate broad terms as required, removing the emphasis from the terms *custody* and *access*.
- The term *parental responsibility* does not assume a shared or equal parenting arrangement, but also does not eliminate one parent from having parental responsibilities.
- When one parent is to have only supervised access to the children, this should be phrased as having "his or her parental responsibility reduced."

Introduction of any new terminology must not gloss over violence in a relationship. Participants felt that violence should be a factor in defining new terminology. Concerns about violence in a relationship should not be the main focus of the definition, but must be included as a concern in any parenting situation.

What are the advantages and disadvantages of the proposed terminology options?

The discussion about the options presented in the discussion guide echoed many of the points raised above on the use of terms other than *custody* and *access*. Workshop participants generally said that the terminology should be changed to offer flexible options for all parental situations.

Participants said that option 5 is not realistic, since not all parents would want or would be able to be an equal parent. It is also a reality that not all parents want to share parenting, and that shared parenting cannot be legislated. Participants agreed that the legislation should recognize the capability of parents to be equal, but also that the law cannot legislate equality where inequality exists. It was felt that *parental responsibility* would be a more effective term and would provide the flexibility needed in various situations.

Option 4, by which judges would be authorized to issue a parental responsibility order instead of a custody order, would describe and allocate the exercising of specific parental responsibilities between parents. This would be a flexible approach and would vary depending on the situation. It is important, though, that the definition of *parental responsibility* evolve, since what is best for infants will likely alter as they age.

MEETING ACCESS RESPONSIBILITIES

Participants said that the current system does not promote access responsibilities well. For example, it does not encourage supervised access arrangements. Participants felt that access is the right of children, and that parents should keep this in mind as they make choices. There is a need for more enforcement of access responsibilities, and mediation, although not mandatory, should be encouraged in separations and divorces. Participants also advocated a mandatory review of all parenting situations and parenting plans to be sure they are workable and acceptable to both parents.

Access is the Children's Right

Parents often do not keep their children's best interests in mind when making decisions. In most cases, the children's best interest is to have both parents available. Often, however, the struggle is between the rights of the parents and the rights of the children. The rights of the children must be considered when making decisions and meeting access responsibilities. The children's voices should be heard and taken into consideration. The denial of access by the custodial parent to the non-custodial parent is often a problem on Friday evening, and the 40 percent rule may play a part in that denial. Participants felt strongly about removing the emphasis on a 60-40 custody split and placing children's needs above the desire to deny access.

Enforcement and Resources for Access Responsibilities

In many cases when access requirements are not being adhered to, there must be a more efficient method of enforcement. There is much confusion about who is responsible for ensuring that access is met. Parents often contact police and lawyers to enforce the access requirements, but neither is able to help them. Workshop participants suggested creating a parenting or enforcement coordinator or officer who could help parents focus on what is best for the children and on the access agreement in place.

It was suggested that legislation clarify the role of police in enforcement and explain that it is not in the best interests of children for police to be involved in custody and access disagreements. Police enforcement should be mandatory only when violence may be an issue.

Mediation

Currently, there are no remedies for denial of access, and non-compliance orders are not significant deterrents. Legislation must put more emphasis on the importance of following the agreed-upon arrangements. Participants suggested that mandatory mediation might help reinforce the importance of following access orders. As it is difficult to attend court whenever there is a disagreement, a mediator could help resolve disputes rather than the parents going to court. The court would be reserved for high conflict relationships, when mediation has not been successful or is not a safe alternative. The mediator could also help review custody arrangements.

Mandatory Review

To best serve children's interests, it should be mandatory to review all custodial arrangements regularly as they reach various ages. Although custodial arrangements may remain the same, alternatives should always be considered.

Supervised Access

The lack of supervised access services is a concern and obstacle for those non-custodial parents who are unable to meet their access requirements and desires. It is in the best interests of children to have a safe and comfortable location to visit with the access parent. In many situations, however, it is difficult to find someone neutral to supervise and there are few places to go for supervised access. Workshop participants suggested encouraging Dad and Me programs. These have so far proven unsuccessful, but more encouragement would give fathers the support and security they often need and want.

How can the family law system encourage parents to meet their access responsibilities?

Participants said that the family law system could encourage parents to meet their access responsibilities by providing more education on the importance of access to the children. Further emphasis should be put on parenting plans that incorporate access arrangements. Also, as mentioned previously, improving supervised access facilities and providing mandatory mediation, except high conflict situations, would enable parents to meet their access responsibilities.

Education

Further education should be provided to parents when they are having difficulty meeting access responsibilities. Resources should include divorce management courses that would emphasize parenting plans, build effective communication skills and reduce conflict. Anger management courses should be encouraged for individuals having difficulty accepting their situation, and therefore creating hostility in the children's environment. Educational and counselling services for children must also be provided.

Parenting Plans

Emphasis should always be placed on the significance and ownership of the parenting plan. The courts must emphasize that parenting plans are flexible and are an agreement between the two parents. The parents must believe that they created their plan together and that it is the most suitable arrangement for ensuring the best interests of their children. The courts should become user-friendly, so if changes to the parenting plan are necessary, the parents can come together and revise it.

Table 1: Organizations Represented at the Nova Scotia Workshops

Bryony House
C.B. Family Place Resource Centre
Children's Aid Society of Cape Breton and Victoria
Cape Breton Regional Police Services
Dalhousie Legal Aid Service
Equilibrium
Family SOS
Feminists for Just and Equitable Public Policy
G.R.A.N.D.
Halifax Regional Police
IWK Health Grace, Mental Health
Metro Divorce Management
MISA
North End Parent Resource Centre
Nova Scotia Association of Social Workers
Nova Scotia Legal Aid
RCMP
Second Chance
Shearwater Military Family Resource Centre
South Shore Family Resource Association/Family Support Centre
Status of Women
Supreme Court (Family Division)
Veith House
Victims' Services
Women Centres Connect

INTRODUCTION

A workshop on custody and access was held in Iqaluit on June 14, 2001, with 17 participants. A list of organizations at the workshop is provided in Table 1.

The following topics were discussed:

- best interests of children;
- roles and responsibilities of parents;
- family violence; and
- child support

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

What are children's needs when their parents separate?

Traditional Views

Participants agreed that it is difficult to describe "best interests of the child" in Inuktitut, because of the language and because the concept is inherently southern. Participants attempted to translate the concept into Inuktitut and came up with "best way to go for the child." They pointed out that there is greater deference towards children in the North than in the South, and that children traditionally have more say about where they go after a divorce or separation. The term *custody* is also a difficult one to use in the North. In the South it implies defined procedures and parameters for contact, which is not a system that works in Nunavut.

In Inuit culture, the woman normally gets custody of the children from a common-law relationship. Inuit tradition considers this arrangement to be in the best interests of the children.

Power Imbalances

Participants also raised concerns about the power imbalances that occur when a marriage breaks down (particularly crosscultural marriages). They felt that the Inuk parent is often at a disadvantage in the proceedings because he or she lacks resources, and so the non-Inuk parent takes control.

Key Factors

Participants listed violence (including power and control issues) and culture as the key factors in determining the best interests of children. Some participants also felt that children should have significant input into decisionmaking. For example, in Grise

Fiord and Resolute, any children older than five must be asked where they prefer to live after a separation or divorce. All participants agreed that the children's feelings should be taken into account

Respecting Aboriginal Customs and Applying Southern Family Law

Participants pointed out that government regulations do not respect Aboriginal adoption customs. They also highlighted the importance of grandparents, and that traditionally the grandparents would adopt a child if necessary after a family break-up. Grandparents have said that social services take children away too soon, before the traditional structure can step in to care for them. However, participants also pointed out that Inuit culture is changing, and that younger people may not have the same opinions and values as their elders. A similar cultural clash can be found between people who live in smaller communities, which tend to be more traditional, and people who live in larger ones, which are beginning to resemble southern communities. For example, younger people look for child support and custody, while the older generation prefers to handle matters in a more traditional way.

In general, it is difficult to apply southern family law in Nunavut. Participants said that Canadian law assumes that children are property, which is contrary to the way in which Aboriginal people view children. They suggested that, for many Inuit, the court system is associated solely with criminal justice but not social or family law matters. Furthermore, it is sometimes difficult to work with social workers, who generally enforce child protection legislation rather than family law, because they use "best interests of the child" in both situations, but with different meanings.

ROLES AND RESPONSIBILITIES OF PARENTS

Improvements to Services

Participants said that many Inuit would be interested in using the law to help resolve family disputes, but that there are not enough services to meet the demand. Suggestions for increasing the availability of services included the following:

- broadening the responsibilities of the maintenance enforcement office to include other aspects of family law, and renaming the office the family support office;
- developing a core of mediators in all communities who could provide information, work to resolve issues, and act as an access point for the court system; and
- hiring more lawyers to work on family law cases.

Lack of Family Law Practitioners

Participants identified several factors that cause people to avoid the family law system. One of these is a lack of lawyers to handle family law cases. In regions where there are no lawyers working in this field, people have little understanding and low expectations of the family law system. In some areas where there are family lawyers practising, they cannot meet the community's needs. Some participants said that the power imbalances inherent in family law matters are exacerbated by the scarcity of lawyers and advocates. However, participants also recognized that lawyers from other jurisdictions might not be able to adjust to working in a culture different from their own.

Point of Entry to the Family Law System

A second factor identified by participants is the way that people become involved with the family law system. Often parents are motivated by the need for income support. Participants suggested that a better starting point would be non-adversarial, and that this requires training for the people who work in or with the family law system.

Justice Committees

Some participants said that the justice committees, which have been developed specifically to take pressure off the criminal justice system, could deal with family law disputes. For example, mediators could be recruited from among the justice committee members. Other participants said that justice committee members in many communities are already overburdened and are not able to fulfil their mandates. Furthermore, justice committees are dominated by men and people from the older generation who do not understand the situations women face during family disputes and marriage breakdowns. A participant mentioned that there is a program for training members of justice committees. This training is not meant to be an extension of government policy; rather, it is meant to support local initiatives. Therefore, it may be inappropriate to involve justice committee members in family law issues.

Service Characteristics

Participants said that it was important to use Inuktitut in all services (through interpreters, if necessary) and to orient the services towards people's needs. Education is needed for mediators, lawyers, judges and advocates. Participants also pointed out that, as Nunavut has a higher frequency of common-law relationships than the rest of Canada, services should address the breakdown of common-law relationships as well as of legal marriages. Another concern unique to Nunavut is the number of children who are not registered when they are born, and who therefore have problems getting any kind of government services throughout their lives.

Need for Social Workers

Participants also pointed out the shortage of trained Inuit social workers (rather than individuals sent by religious organizations). Frustration was expressed about developing training for social workers that would be relevant to Nunavut society and still acceptable to the federal government.

New Terminology

Participants had varying opinions on whether changing the terminology in the *Divorce Act* would affect the decisions people make when they separate or divorce. Of those in favour, some said that changing the terminology might help people to break out of the custody mind set and think more about their roles and responsibilities as parents. Other participants said that new terminology could be easier for an ordinary person to understand and therefore less intimidating. Still others said that, for the focus to be on the best interests of children, the terminology would have to change.

Among those who did not agree with changing the terminology, some participants felt that doing so would not have an impact unless the philosophy underlying the law were changed as well. Others said that changing the terminology would not change anything at the practical level, when parents are fighting for custody of their children.

All participants agreed that any new terminology should be easily understood by Inuit, giving a clear indication of how the process of separation and divorce is conducted. Participants also said that it is important to remember the feelings and needs of children while changing the terminology.

Looking at the Law

Custody and Access

When discussing the various options for terminology in the discussion guide, participants pointed out that the words *custody* and *access* translate better into Inuktitut (although there are differences between dialects) than some of the proposed terms. *Access* translates as "visitation" or "visiting custody." *Custody* translates as "to hold" or "to have."

Shared Parenting

Some participants were concerned that the term *shared parenting* not be used without analyzing the gender implications.

Shared Responsibilities

Some participants said this was a good option precisely because it reflects the importance of sharing responsibility between the two parents.

Law in Conflict with Culture and Context

Participants pointed out that the major difficulty facing separating and divorcing parents in Nunavut is that the Canadian court system is inherently adversarial, which is not in keeping with Inuit culture and traditions. Participants said that Nunavut must develop its own justice system that is appropriate for the North, rather than simply adopting the systems of other provinces. Looked at this way, terminology is not as important as the system itself. Nevertheless, some participants still felt that *custody* and *access* are not the best terms. Participants also acknowledged that lawyers who come from other parts of Canada will retain their own understanding of the terms used, regardless of what those terms are.

FAMILY VIOLENCE

What are the issues facing children in situations of family violence?

Traditional Views

Traditionally, when a family situation becomes violent the victim seeks advice from elders (usually grandparents and other family members) and likely leaves the relationship to return to his or her own family. The children would go with the parent and the other parent would see them at the family home when desired. However, if the children want to live with the other parent, they would be allowed to do so.

Some participants said the family violence issue could be resolved outside the court system through traditional methods, unless the children were at risk. Others felt that more social workers and psychologists were needed to support children in situations of family violence. However, it was pointed out that social workers are overburdened and often mistrusted, and that psychologists are expensive.

Alternatives

Some participants said violent situations require alternatives to assessment and supervised access.

Others raised the point that the third party involved in family violence situations does not have to be a social worker or psychologist. This person could be a mediator or some other type of counsellor.

Improvements to Services

Need for Services

Participants said that a wide range of services are needed in Nunavut to help address family violence issues, as well as other issues (such as addiction) that may contribute to family violence.

Treatment resources (for addictions) are clearly needed, as there are currently none in Nunavut. The fear and abuse that stem from addiction continue to affect children, who need treatment to break the cycle of addiction and abuse.

Participants also pointed out that there are very few services for families that are breaking down. In small communities it is difficult for parents to find a safe place to go to get enough "distance" from the situation to make good decisions. Children often get lost in the shuffle. Participants also explained that southerners who live in Nunavut have left behind their family support system, and therefore need even more support when family breakdown occurs.

Participants said that Nunavut is drawn into a southern system of law without having the resources and services necessary to support it. Again, a lack of trained Inuit social workers was identified as a problem.

CHILD SUPPORT

Traditional Views

Participants explained that, traditionally, the mother is the caregiver and nurturer in the family and the father the protector and supplier of food. They also said that Nunavut is a very cash poor society. Because of this, the child support guidelines are unrealistic, and alternatives should be available. Participants suggested that paying parents be able to "pay" with a combination of cash (when they had any) and food (for example, caribou, seal or fish). Alternatively, paying parents might buy groceries once a month and contribute those. In general, participants felt that an Inuit-oriented form of child support should be developed that would be much more realistic and practical than that set out in the existing guidelines.

Alternatives

Participants pointed out that there are two aspects of child support: what is ordered (according to the guidelines) and what is enforced. If the child support ordered were more realistic it might be easier to enforce. Participants also felt that community solutions to enforcement were required, as enforcement is a non-traditional concept.

Finally, some participants suggested that single parents should receive training so that they could better provide for their children without relying on child support.

Table 1: Organizations Represented at the Nuvavut Workshop

Department of Health and Social Services
Department of Health and Social Services, Hall Beach
Iqaluit Social Services
Keewatin Legal Services
Maligarnit Qimirrujiit
Maliiganik Tukisiiniakvik
Nunavut Court of Justice
Nunavut Justice, Legal Counsel
Nunavut Justice, Policy
Nunavut Social Development Council

INTRODUCTION

Workshops on custody and access were held across Ontario at the following locations: Ottawa on June 6, 2001, Thunder Bay on June 18, 2001, Toronto on June 19, 2001, and London on June 22, 2001.

The following topics were discussed:

- best interests of children;
- roles and responsibilities of parents; and
- family violence.

Some points were also raised with regard to child support and other financial issues.

Some women's groups boycotted the workshops in Ontario. The reasons cited included that the consultation document and process fail to acknowledge women's realities in marriage, their vulnerability to violence and poverty, and the highly conflictual nature of many parents' separation from each other. The organizations indicated that the consultation document does not make a single reference to women. However, some of the boycotting groups elected to participate through the submission of written briefs, and these have been incorporated into the main report.

During the workshop in Toronto, a bomb threat occurred and the discussion was temporarily disrupted. The workshop was then relocated and continued in the new location.

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

What are children's needs when their parents separate?

The discussion on children's needs after their parents separate was wide-ranging. Although there was some agreement on several of the points raised, in some cases participants took different stances with regard to the same issue. Some participants were also of the opinion that children's needs are so closely tied to the well-being of the parents that it was pointless to discuss the children's best interests before discussing the needs of parents.

Safe, Stable and Healthy Living Environment

Although it was acknowledged that each family's situation is unique, there was general agreement that children need a healthy, safe and stable environment throughout the divorce and separation process. Participants felt it is important for parents to make sure that their children know they have the unconditional love and support of both parents. They also felt it is important to maintain a routine and continuity in the children's lives (through, for example, activities and hobbies) and to ensure predictability.

Some participants considered the economic well-being of both parents a part of ensuring a stable environment for the children. Others thought the financial situation of either parent should not be considered as a factor in making custody and access decisions.

Some participants talked about the need to protect children from violence. Some approached this in terms of gender, explaining that it is the mother's role to nurture children and the father's role to protect them. Others felt that both parents could protect their children. Still others noted that protecting one's children can sometimes mean protecting them from one's self.

Protecting Children from the Legal Process

Participants addressed the importance of shielding children from the legal system and the court process. They felt parents should never use children as leverage or "pawns" to gain control of the situation. They emphasized that children should be free to be children.

In particular, some participants felt that children should be protected from witnessing any kind of conflict or violence between parents.

Changing Developmental Needs

Participants felt there is a need to acknowledge that children's developmental needs change with age. Some participants stressed the importance of the child developing a positive self-esteem and their own cultural identity. Children should be able to learn from both parents about their different cultural backgrounds.

Access to and Support from Parents, Extended Family and the Community

Participants felt that children need a sense of support from their parents, community, schools and extended family. Maintaining and developing relationships with parents, extended family and other community members was considered particularly important. Some participants said the key factor in allowing these relationships to flourish was sensitivity on the part of both parents to the child's relationship with the other parent. Other participants noted that, when it is not suitable for the parents to care for the children, extended family members should be considered as possible caregivers.

However, some participants pointed out that, in some situations, access to parents and extended family members may not be in the best interest of the children. For example, in situations in which violence is a concern, children should not be forced to maintain contact with parents or extended family members who might put them in contact with the abusive parent. Other factors noted that should affect decisions about access to a parent or another individual (e.g. an extended family member) included mental and physical health and living standards.

Some participants felt that children should be free to decide which parent they want to live with.

Communication

Parents must establish open and honest communication with their children to ensure that they understand what is happening and have an opportunity to express their opinions and concerns. There is a need to establish an adequate support system to make sure parents are aware of, and are able to properly address, the needs of the children during the divorce and separation process. Parents should reassure children that they have the right to make decisions, and that the decisions regarding them are not made solely by anonymous representatives of support services or the legal system.

Should the federal *Divorce Act* specify factors to consider when determining the best interests of children? If so, what should they be?

Many participants suggested that children's needs were not adequately listed in the consultation document. Their suggestions for other needs that should be addressed are discussed above.

With regard to the *Divorce Act*, participants made the following comments.

- Some participants referred to the *Divorce Act* as a legislative tool that should enforce the principle of having both parents involved in the child's life.
- Many participants pointed out that the system should enforce a "win-win" motivation, so that it does not promote the idea of one parent being the "loser".
- Some participants felt that divorce legislation should reflect the fundamental rights of the child in accordance with the law. They made reference to the United Nations Convention on the Rights of the Child and the Canadian Coalition for the Rights of Children.
- Most participants agreed that the law must thoroughly consider the history and context of each family's situation and ensure that children's needs are the main focus.
- When determining how parenting time is divided, the law must ensure that children are protected from conflict during the legal process, especially in cases of family violence.

What Services are Needed for Children?

Participants identified several characteristics that they felt services for children should demonstrate. These were accessibility, openness to different needs, and focusing on the best interests of children.

Accessibility

Some participants felt that children's views and opinions need to be better heard and represented during the divorce process. In order for this to occur, they suggested:

- making access centres and other facilities (for example, the courts) into more comfortable environments for children (by making them less institutional);

- developing positive, accessible and comprehensive information services for children of all ages; and
- enabling greater access to children's advocates and lawyers.

Some participants felt that children should have better access to support throughout the process. They suggested that this could be accomplished through increased funding for shelters and ensuring that front-line services and staff are accessible to children who witness violence. Some of these participants also stressed the need for mandatory counselling for parents to help them better understand the children's experiences.

Other participants suggested that facilities be made more accessible and comfortable so that parents in jail can maintain contact and spend time with their children.

Openness to Different Needs

Some participants felt that services and programs for youth must acknowledge age, gender, culture and other issues affecting children's needs. They suggested that one way to provide such services would be through the school system.

Focusing on the Best Interests of Children

Participants emphasized that a consistent system must be developed to evaluate each situation based on the best interests of the children and to ensure that children are not used as "pawns" or leverage in the divorce process.

ROLES AND RESPONSIBILITIES OF PARENTS

What factors enable good parenting after separation or divorce?

Participants felt that in order to ensure good parenting after divorce the children's needs must be considered first. They generally felt that both parents are responsible for ensuring that children are provided with the necessities of life in a safe, stable and healthy living environment. This responsibility includes meeting the needs of the children, as expressed above (addressing their emotional, financial, physical and spiritual needs), and recognizing that these needs will change as the children grow older.

Some participants expressed this idea with the term *stewardship*, which they felt de-emphasized ownership of the children and replaced it with other roles, among them that of teacher. To these participants, stewardship emphasized the role of each parent in meeting the children's needs while they are in their care. However, participants differed about who should carry out that responsibility and how it should be done.

A Parenting Plan

Many participants advocated that parents agree to a shared-parenting plan to define the nature of the relationship between the children and each parent, and to ensure that the responsibilities outlined above are carried out. Some participants consistently supported the concept of shared parenting, saying that parents should share the roles and responsibilities as they did before the divorce or separation. Others felt it would not always be possible for each parent to have equal involvement. They noted that when the parents cannot get along and communicate they probably will not be able to agree on a parenting plan. They also noted that adequately assigning parenting responsibilities within a shared parenting framework might prove difficult, and therefore some responsibilities might not be met.

Some participants said that when the parents are not able to develop their own parenting plan, better support services should be available from the community. A more in-depth discussion of specific suggestions made by participants with regard to services is provided below.

Accountability

Participants felt that parents must realize that they are accountable for themselves as well as their children. They felt both parents must understand what each is accountable for during the separation and divorce process. Parents should be accountable for ensuring that children are not forced into a caretaker role (either for the parent or their siblings) and not put in the middle of conflict situations.

Some participants said parents should be held legally accountable for good and bad parenting, and others said a reputable, accountable representative (child advocate) should be available for the children throughout the legal process.

Parent-parent Relationship and Parent-child Relationship

Participants felt that developing and maintaining healthy parent-parent and parent-child relationships was an important parental responsibility. In order to foster these relationships, participants said parents should:

- ensure that they do not involve the children in any disputes between them;
- communicate openly and honestly with the children about what is happening throughout the divorce process;
- listen to the children's point of view and acknowledge their opinions and concerns;
- maintain a non-violent relationship with each other and with their children;
- recognize the significance of the other parent's role with the children, and acknowledge how the children may be interpreting the situation;
- be sensitive to the other parent's feelings; and
- make space for the other parent to continue the role he or she had before the divorce and not attempt to replace the other parent.

Many participants felt access to the children was a key factor in developing a healthy parent-child relationship. They acknowledged the possible long-term implications that denial of access might have on the relationship between the non-custodial parent and the children. Some of them advocated developing new terms (avoiding those with negative connotations, such as *visitor*) and addressing situations in which access is being denied.

Other participants addressed the issue of when access is *not* being exercised, emphasizing that this also has a negative impact on the parent-child relationship.

Some participants recognized that parents who have limited access to their children may not fulfil all of their roles and responsibilities. They pointed out that non-resident parents are often confused about their role, and suggested that there be more support services available to ensure that both parents clearly understand what is expected of them.

Education and Counselling

Some participants addressed the need to educate people on the roles and responsibilities of being a parent. In particular, they felt that people must understand that the time a parent spends with a child is a privilege, not a right. Other participants emphasized that counselling has a role to play in helping parents focus on their children's needs rather than their own.

What services would be helpful to parents who are trying to reach an agreement?

Some participants, particularly those from the London area, acknowledged that the services available in their region are good. At the same time, they stressed the need for quality standards across the country. Other participants felt there is a need for improved awareness of, access to, and funding for these services. Still others said the services available in their communities were very limited.

Some participants felt that accessing support services and information before the divorce and separation process begins should be a mandatory step for all parents.

Improvements to Existing Services

Increasing Awareness

Many participants discussed the need to improve the public's awareness of services. Suggestions for doing so included:

- public service announcements presenting all possible options available (some participants said these should promote mediation as an option);
- using commercials and advertisements to eliminate stereotypes, create awareness and promote children's best interests;
- inaugurating a 1-800 line for parents going through a divorce or separation;
- educating people about parenting roles and responsibilities before adulthood;
- developing resource centres for parents so they can educate and help themselves without lawyers; and

- providing clear, comprehensible and accessible information on divorce and separation procedures, the legal system and support services.

Training and Regulation

Some participants felt that improved training and regulation of service providers and others involved in the divorce process (such as judges and lawyers) would improve existing services. For example, they felt these individuals should have:

- clearly defined roles in the process;
- education and support in implementing any new terminology or changes to the *Divorce Act;*
- training in issues of violence, human rights and cultural identity; and
- training in collaborative law (which is used in many parts of Ontario).

Some participants highlighted that this training should be standardized across the country.

Coordination and Collaboration

Some participants felt that services would be improved through greater collaboration among the different levels of government and between governmental and non-governmental services. Federal and provincial governments should develop an integrated policy to ensure adequate funding and accessibility of services. Furthermore, changes to the system should include the development of thorough guidelines and standards to ensure that all factors (economic, social, psychological and emotional) relating to each parent are considered when addressing custody and access issues.

Other participants felt that services available should be evaluated and, when possible, combined to improve efficiency.

Characteristics of Services

Participants emphasized several characteristics that they felt all services, existing and new, should have.

Addressing Gender Issues

Both male and female participants felt that services should take gender issues into account. However, they differed considerably on what they meant by this statement.

Many men's groups felt that men are often denied funding and services, and that there is little support for fathers throughout the divorce process. They pointed out that there are few shelters or transition houses that provide services for men. These groups felt that this gender bias in services (as well as in laws, policies and publications) must be eliminated, and that there should be equal funding of men's and women's services and equal access to financial support services (such as legal aid).

In response to this point, some women's groups said women are still more often than not the primary caregiver, and that some traditional generalizations about men's and women's roles are often true in real life.

Many participants also felt that the government must stop negative stereotyping of single parents, both male and female.

Sensitivity to Special Needs and Culture

Participants felt that appropriate services must be available to meet the different needs of parents. They highlighted the need for services that fulfil the following:

- address the needs of substance abusers and the mentally ill;
- are more culturally sensitive (including to the needs of Aboriginal families);
- validate the parenting abilities of those with disabilities and of gays and lesbians;
- are available in languages appropriate to the parents and children involved;
- address the needs of biracial and bicultural families; and
- address, specifically, the special needs of families experiencing violence.

Rural Accessibility

Some participants raised the issue of improving the availability of support services (including legal aid) for both men and women in rural areas.

- They felt that service providers and legislation must specifically address issues of confidentiality in small communities. A special effort must be made in order to ensure the family's privacy is respected, as one family's situation often becomes common knowledge in smaller communities.
- They emphasized the need for education and support services, specifically in the smaller northern communities.
- They highlighted the lack of appropriate infrastructure (such as venues for family court meetings).
- They raised concerns about the quality of assistance available in rural areas (for example, some participants felt that lawyers and judges are sometimes ill-informed about the cases they are handling).

Specific New Services Needed

Some participants suggested that new services are needed in their areas. These suggestions included supervised access centres, services addressing financial needs, alternatives to the legal system, preventative services, changes to existing legal services, new materials and community-based services.

Supervised Access Centres

Some participants felt that supervised access centres should be better funded. Others felt that existing centres could be improved by developing clearer and more accessible pick-up and drop-off arrangements in order to help parents avoid and manage abusive situations. Another suggestion was that more people-friendly facilities be developed that acknowledge the different needs of children in various age groups.

Other participants noted the need for developing an alternative to supervised access and visits, as they are an infringement on parents' and children's rights. Parents are frequently unable to continue a "normal" relationship with their children when their meetings are monitored or chaperoned.

Financial Needs

Some participants emphasized that the system and services must recognize that, in some circumstances, one parent is unable to provide financially for the children. Others felt that parents should have equal financial responsibility for the children regardless of their personal situation. Suggestions for new services dealing with financial issues included:

- an assessment of the financial capacity of each parent should be undertaken before financial responsibilities are allocated (such an assessment would include a "thorough and fair" analysis of each family's situation); and

- guidelines to ensure that proper funding and support services are available, so both parents are capable of providing financial support for the children.

Alternatives to the Legal System

Some participants expressed concern about the role of the legal system in the divorce process. The participants would like to see the family law system place more emphasis on parents working out their own parenting agreements, while providing adequate support and mediation services when needed. They felt there is a need to develop alternatives to the legal system.

Some participants said mediation would help keep families out of the legal system and enable them to avoid the adversarial nature of that process. Through mediation, parents would be able to establish a balance of power and adequately determine their respective decisionmaking responsibilities.

Other participants felt there were caveats to the use of mediation as a way of developing parenting agreements. They stressed that:

- mediators must be properly trained to identify persons who can benefit from mediation services;

- service providers must realize that mandatory mediation is not always appropriate, especially in situations of violence as a person's safety may be at risk; and
- mediation requires people to work willingly together in a safe and respectful way to determine a parenting agreement.

Preventative Services

Some participants discussed the need for a plan that addresses the high divorce rate by focusing on keeping marriages intact, as opposed to getting involved in the divorce industry. They called for preventative services such as:

- mandatory marriage preparation courses and services offered by religious institutions;
- services that could provide options and views from people who do not have a vested (financial) interest in the divorce industry;
- pre-marital counselling and advice;
- pre-parenting seminars;
- parenting plans; and
- education programs on the implications of separation and divorce.

Some participants felt that schools interfere too much in family situations, and that social service agencies undermine non-divorce resolutions to family problems.

Legal Services

Some participants felt that the legal system and support services should ensure that both parents have access to school and medical information about their children. Others said that greater integration was needed between federal and provincial family law legislation. Still others highlighted the need for better communication and flow of information between criminal court and family court.

New Materials

Participants at the Ottawa session suggested the development of a parenting plan, guidelines, and books and publications to specifically address the needs of the children. One commented that the government should avoid publication of documents that advocate removing children from their parents' custody. Also, the government must eliminate the gender bias and the general assumptions and suggestions of "criminal activity" that are often made in government publications. Specific reference was made to two documents: *Où est ma place?* (Government of Ontario) and *À qui vont les enfants?* (Community Legal Education Ontario).

Community-based Services

Some participants felt that more emphasis should be placed on the development of community-based services specializing in divorce and separation and parenting, as well as counselling and mediation for parents and children. Suggestions for such services included:

- resource centres for parents, so they can educate themselves about the legal process;
- a comprehensive community-based clinic outside the legal system that specializes in separation and divorce and the reconciliation of parents and children;
- more services for victims and witnesses of violence to ensure they have access to counselling, guidance and support; and
- referral offices that could promote a greater public awareness of existing services.

Some of these participants noted the Durham Pilot Project, which focuses on family conflict resolution and counselling services, as a specific example of what community-based services should be.

New terminology: what do you feel is the appropriate message to include in the legislation?

Many participants agreed that the terms *custody* and *access* are not appropriate. They felt that these terms had negative implications, are often misinterpreted, and are too narrowly defined. Some of these participants felt that new terminology is needed to eliminate bias in the legislation, educate people and change their views of children as property or something to be controlled, reflect individual parents' respective interests and capabilities, and be more culturally sensitive and gender-neutral.

Two themes echoed throughout the discussion on terminology. One was the need for more recognition of women's and men's issues. The other was the question of whether legislation should be worded so as to take into account the majority of cases or the most difficult of cases.

Some participants felt the proposed options for terminology were too vague and unclear.

Option 1
Keep current legislative terminology.

There was some support for keeping the terms *custody* and *access*, but defining them more clearly (in a definition that gives consideration to issues of family violence). Others participants supported the current terminology because it provides a simple framework by which custody and access arrangements can best be determined.

Some participants described the current terms as too "legalistic" and offensive. They felt that there should be a comprehensive review of the system and terminology. Men's groups were explicitly concerned with the need to legally allow men to be more involved in the parenting process. They felt that current legislation does not allow parents to "share" parenting, in that they often do not share the financial benefits (i.e. Bill 118 (5) income tax law) and in that there is gender bias in tax benefits (Bill 122). They felt that legislation should address and define parents' rights, so that parental responsibilities can be adequately delegated and implemented.

Option 2
Clarify the current legislative terminology and define custody broadly.

Some participants said the current terminology should be clarified, and therefore they supported option 2. Some of these participants thought the other suggestions for new terminology (options 3 to 5) would not necessarily change the situation and that changing words might not clarify understanding.

Some participants suggested that a preamble be added to the *Divorce Act* that establishes a "threshold" to clearly address issues of violence, culture and language, and includes these factors in the development of new terminology.

Other participants suggested defining *custody* more broadly to include the concept of parental responsibility, which would indicate privilege as opposed to ownership.

Option 3
Define custody narrowly and introduce the new term and concept of *parental responsibility*.

Some participants supported further developing the term *custody* while adding the concept of parental responsibility. They said clear definition of parental responsibility is needed. They also mentioned that legislation should be changed to permit parents to develop their own parenting plan, and that only when this is not possible should the courts determine custody and access.

Option 4
Replace the current legislative terminology and introduce the new term and concept of *parental responsibility*.

Some participants felt that parental responsibility was a more appropriate option than shared parenting. Some supported parental responsibility because they felt it offered more options for addressing violence. Others suggested the following for implementing parental responsibility:

- emphasis should be on using available resources to identify people who can instruct parents and provide a safe place for people to solve their own problems, instead of relying on the judicial service;

- *parental responsibility* should be re-worded as *nurturing responsibility*; and

- for parental responsibility to be successful, parents' rights should be clearly defined.

Option 5
Replace the current legislative terminology and introduce the new term and concept of *shared parenting*.

Some participants were against introducing the term *shared parenting*. They argued the following:

- In other countries, the implementation of this concept has resulted in increased in conflict or problems in which when violence is an issue. For example, in Australia, violence is not adequately addressed under this model, partly because judges are not properly informed and trained, and therefore default to a 50-50 split all the time.
- The concept of shared parenting and the emphasis on gender-neutral language puts women and children at risk. For example, it was suggested that this option would put the onus on women and children to prove that they are being abused and that parenting cannot be shared.
- This concept implies that parenting responsibilities can be equally divided, and this is not realistic in all cases.
- This concept creates a dangerous presumption that equality exists between the parents before and after the separation.
- There is a need to be cautious in assuming that parents are capable of "working it out," especially in circumstances of abuse.
- Children might not be able to adapt or cope with shared custody, as it is often too disruptive to their routine (especially young children).

Other participants supported the option of *shared parenting*. They argued the following:

- Legislation should start with the presumption of equality.
- It is in the children's best interests to have access to both parents.
- Parenting should not have a bias and should be automatically shared. The law should ensure that fathers have equal access to their children.
- Parents should be able to make arrangements to divide tasks according to their specific capabilities, recognizing that it may not be possible to have an equal division of responsibilities.
- Shared parenting would lessen the need for services.

Some participants felt that legislative terminology must consider issues such as violence against women *and* men, cultural differences, and financial, physical and emotional restrictions and capabilities. For example, if one parent is suffering from a mental illness (e.g. depression), it may not be appropriate for him or her to have equal responsibility for the children. Each family's situation is different, and there are many variables to be considered in developing a parenting plan. One factor that must be considered with regard to shared parenting is that one parent may have to relocate due to job or schooling, which will interfere with his or her ability to share responsibilities.

Other participants proposed the following options.

- A new option termed *equal shared parenting*, according to which parenting and decisionmaking would be shared 50-50 (all aspects).
- Implementing the 48 recommendations of the Special Joint Committee on Child Custody and Access.
- A 50-50 split should be the default, except when one of the parents is gay or lesbian, in which case the gay or lesbian parent should not have custody 50 percent of the time because children need parents of both sexes.

FAMILY VIOLENCE

How well does the family law system promote the safety of children and others in situations involving family violence?

There was general agreement that the current system does not adequately meet the needs of children in situations of family violence. The primary concern was the need to have a clear definition of family violence that:

- acknowledges that men, women and children can all be victims of violence;
- recognizes the different forms of abuse in families (such as emotional, physical and sexual);
- acknowledges the long-term effects of violence on children; and
- is consistent across the country.

With regard to potential changes in legislation, participants also raised the following issues.

- Some felt that the current approach to family violence is too broad and unbalanced. They felt that the federal government should clearly distinguish between abuse, conflict and violence. Some considered violence a criminal offence, whereas abuse and conflict would be outside such a definition.
- There was some disagreement about the prevalence of violence and the perpetrators of violence. Some participants argued that men and women perpetrate violence equally, and that this should be recognized in the legislation. Others felt that violence is not a "gender-neutral" issue, that men perpetrate most violence, and that the legislation should acknowledge this.
- Some participants felt that the actual process of arriving at custody and access agreements can perpetuate the abusive situation and, therefore, that the legislation should be modified to reduce the opportunities for this. Suggestions included considering the past history of violence, adopting a "threshold" approach to safety (i.e. that dealing with violence and abuse is the first hurdle to entering the process), and thoroughly assessing the violence involved (its nature, likelihood of recurrence and frequency).

- Some felt that parent-parent violence did not indicate that parent-children violence was necessarily a concern. Others felt that parent-parent violence was enough of an indicator that the children are or could be at risk of violence and, therefore, should be protected.

Participants emphasized that children must be protected from violence no matter what. They highlighted the negative impact of violence on children, including that exposure to violence can significantly affect children's ability to follow rules, learn and develop social skills. It can also cause them to lose their sense of self-worth and their ability to trust.

The main issue facing children is their need to feel emotionally and physically safe. Some participants felt that the legal system and support services could help children by:

- being responsible for ensuring that the caregiver and children are provided with adequate support (emotional and financial) to ensure a safe living environment;

- emphasizing the role of the community, schools and extended family in ensuring that the children are protected from violence and receive positive reinforcement;

- ensuring that children have the opportunity for a healthy development process;

- realizing that although children may not show physical signs of abuse or violence, they can perceive, feel and sense conflict and tensions in their parents' relationship; and

- providing children with advocates to support them and voice their perspective.

Improvements to Services

When discussing services, participants commented on the general approach that should be taken in service provision, and made suggestions for types of services that should be offered.

General Approach

Focus on Children's Needs. Most participants agreed that the system and services should focus specifically on the best interests of the children. Emphasis should be placed on support services that listen to children's stories and help them to redevelop a sense of trust and self-confidence.

Some participants felt that services must be cautious about removing a child from the home, since one cannot assume the children will be better off with strangers (such as the Children's Aid Society or welfare authorities). Others felt that timely access to services would be a key factor in meeting the needs of children in violent situations.

Address Gender Issues. Many men's groups expressed concern regarding gender bias toward the subject of family violence. It is too often assumed that men are the main perpetrators of violence. They felt there is a need to recognize that men and women are potentially violent towards each other and their children. They advocated that:

- the government and the system should acknowledge that men are also significantly affected by violence;

- more gender-neutral terms (which do not perpetuate negative stereotypes) should be used when addressing family violence;

- society's attention towards violence is gender biased and more often than not supports the women's perspective; and

- more support and funding for, and access to, counselling services for fathers are needed.

Other participants pointed out that it is not as common for women to be perpetrators of violence. They advocated a gender-based analysis of family violence issues, and felt that this should affect custody and access arrangements and related services. In some cases, they said even supervised access is not appropriate. Others added that there is a need for a gender-based analysis of support services and the legal system to ensure that adequate support is available to both women and men.

Ensure Safety. Participants felt that current services, such as mediation and parenting courses, often do not adequately address the issue of the victim's safety after separation. They offered various suggestions as to how safety could be ensured throughout the process.

- Some said parents should be offered counselling and mediation services before they enter the legal system. Others, however, felt that mediation is not an appropriate service in situations of violence and, therefore, should not be an option.

- Some felt there should be funding to ensure the accessibility of safe alternative dispute resolution services.

- Others emphasized the need to create more safe places for access and exchange. With regard to such centres, some participants pointed out that there should be more training for supervised access personnel.

- Some highlighted the need for emergency custody orders while risk assessments are being conducted.

- Some suggested more adequate support from the justice system for women and men when they are separating from an abusive partner.

Role of the Community. Some participants suggested that the community should develop support services for families dealing with violence. They said that there is a need for services outside the legal system. Participants suggested community-based clinics as well as family conflict resolution services, such as the pilot project in the Durham region. It was added that these services would focus on mediation counselling services and, therefore, there is a need for increased funding as well as adequately trained and educated family conflict counsellors and support workers.

"Humanistic" or Holistic Approach. Some participants felt that there should be a "humanistic" (rather than gender-based) or holistic approach to the development of support services and educational programs that address issues of violence.

Specific Service Needs

Education and Training. Some participants stressed that support service providers and legal professionals should be thoroughly trained and educated about family violence. They felt this would allow service providers to more accurately assess each family's unique situation.

Prevention. Some participants acknowledged the need for a preventative approach by teaching children in school to avoid violence and have healthy relationships with peers and in society. With regard to the preventative approach, one person suggested that the system should focus on parental behaviour and on promoting ways of coping in marriage and family life. Other participants felt that supervised access centres could play a preventative role by making their services available during the assessment of allegations of violence.

Supervised Access and Other Centres. Some participants felt a need for more supervised access centres and other similar services, such as re-introduction centres for children and parents who have not seen each other for a while. Other participants felt there should be time limits on supervised access orders so that these could be regularly reassessed.

Some participants felt that the personnel at supervised access centres should receive better training, be more regulated and be more neutral.

Services for the Falsely Accused. Many men suggested services to help parents recover from the consequences (e.g. denial of access) of false allegations, no matter how much time has passed. They felt that fathers are often the "victims" of false accusations, and they often end up living with the consequences of being labeled guilty even if they are innocent.

Family Profiling. Some participants promoted family profiling as a way to assess the unique situation of each family. By assessing the seriousness of the situation from high to low profile, service providers would be able to identify the issues facing the family from their past history to the present. From this analysis, service providers could gain an understanding of the extent of the problems as well as the needs of the family, and allocate the necessary guidance and support.

What messages would you like to see reflected in the terminology and legislation with respect to family violence?

Focus on the Best Interests of Children

Most participants felt that the law must recognize and address the physical and emotional harm and risks affecting children who witness violence. Some felt that services must be available to specifically address the best interests of the child in relation to family violence. Also, some participants said there should be constant support and analysis of the children's well-being during the divorce process.

Other participants stressed that the legislation should be "strong" because it is the last resort for people who are trying to get out of violent situations.

Recognizing the Seriousness of Violence

Participants generally felt that the legislation must make it clear that all violence is serious, that judges and the legal system cannot make assumptions, and that they must consider all facets of the situation until the allegations are proven either true or false.

Some participants highlighted the need to develop tools to screen and assess the nature and seriousness of the violence, which would have an impact on the level of access granted. They felt there should be more accurate assessment of each family's situation before granting or withdrawing access privileges.

False Allegations

Men repeatedly raised the issue of false allegations of violence resulting in innocent parents (most often fathers) being denied access to their children. They felt there is gender bias in the system. Other participants maintained that false accusations are rare and not easily made, as there is a tremendous onus on victims to provide a substantial amount of proof and that the truth is often uncovered through the assessment process. These participants felt it is important to consider the context of the false allegation and understand that an "unsubstantiated allegation" does not categorically mean an allegation is false.

Some participants stressed that by maintaining accurate statistics and records, the family law system should be able to adequately identify and address instances of false allegations and treat them as a criminal offence. Other participants said lawyers often tend to make assumptions that lead to false accusations.

Enforcement Issues

Some participants felt that the police should be able to more adequately address and enforce court orders and access arrangements. The police must communicate with social services about issues of domestic violence and, they said, there should be harsher punishment for non-compliance with access orders. They also felt that information from criminal court must be transmitted to family court proceedings.

Other participants pointed out that the legal system must have effective enforcement mechanisms to ensure a victim's safety outside of the courts.

Other Points

- Some participants suggested that the law should recognize that when there is violence, mediation is not a safe option.
- Some felt that perpetrators of violence should be required to receive help before any access is granted.
- Some pointed out that the system too often assumes that fathers are the perpetrators of violence.
- The current legislative system was described as promoting violence by leaving fathers who have been denied access with a sense of loss, frustration and anger.

Looking at the Law

Participants were asked to consider the list of proposed approaches the government could take to promote child-centred decisionmaking in situations of violence and to ensure the safety of children and others.

Option 1

Make no change to the current law.

Some participants agreed that changes should be made to the legal system's current approach to family violence. Some of these participants felt the legislation should include consequences for false allegations, parental alienation and unsubstantiated denial of access. Others suggested that the courts need to develop a more detailed framework to acknowledge and consider all factors of violence.

Some other participants, who did not support most of the options provided, felt it would be more beneficial to remain with the current law. Others thought the focus should be on the basic need for a more adequate definition of violence.

Option 2

Include a general statement in the law to acknowledge that children who are victims of violence or who witness violence are negatively affected and that family violence poses a serious safety concern for parents and children.

There was little support for this option. Generally, participants felt it did not adequately address the seriousness of violence and the negative impact it can have on parents and children.

Option 3

Make family violence a specific factor that must be considered when looking at children's best interests and when making parenting decisions.

Some participants supported this option because it identifies family violence as a factor in defining parental arrangements. They felt there is a need to acknowledge the pattern of abuse, even though this does not always mean the abuser should not have access to the child. Other positive points raised with regard to this option were that:

- it has the potential to address the range of issues surrounding family violence; and
- it would address the need for services that focus specifically on the best interests of the children.

Some participants also had suggestions for improving this option. They felt that beyond making violence a specific factor, it is necessary to acknowledge the likelihood of re-offense and consider other pathologies, such as mental illness, substance abuse and emotional abuse, as contributing factors to violence.

Other participants emphasized that parental contact must be maintained—since it is vital to the well being of the child—in all but the most exceptional cases.

Option 4

Establish a rebuttable presumption of limited contact and limited decisionmaking role for a parent who has committed family violence.

Some participants supported this option because they believe the perpetrator must have a diminished role in the children's lives and because this option "errs on the side of caution" in dealing with violence. They emphasized that violent parents should be separated from the children, but not necessarily denied access in a supervised setting.

Some participants disagreed with the limited contact option because they did not think it was a strong enough approach to the issue of violence. They felt it is too vague and needs a clearer definition. Some felt that the perpetrator should not be granted access but be subject to a rebuttal in due time. They also noted the need for significant consequences for the perpetrator of family violence and that it is not in the children's best interest to be put in the custody of the abuser or to have unsupervised contact with the abuser.

Other participants disagreed with option 4 because they felt it is too harsh. They felt that the system cannot deny children's access to parents and that the courts must presume innocence until the accused parent is proven abusive. They emphasized that it is often the parents who need to be separated from each other rather than the parents and the child. Finally, they felt that this option might encourage false allegations of violence.

Option 5

Restrict the impact of the "maximum contact" provision by moving the principle from section 16(10) of the *Divorce Act* to the section that deals with the "best interests of the child."

Some participants supported this option because they believe that abusive or violent parents should have no contact with their children whatsoever. Other participants supported this option when combined with option 4.

Other participants did not support this option because they felt it is not realistic and would not be acknowledged in the courts. They felt there should be a consistent definition of family violence and a burden of proof that makes sense.

FINANCES AND CHILD SUPPORT

Although the issue of child support was not formally raised during the workshop, several participants did make comments touching on it, including the following:

- finances should not be taken into consideration when deciding custody and access issues;
- child support is often used as "maternal" support;
- there should be a clear definition of child support, including a ceiling limit based on the daily needs of the children (e.g. lessons, health care and food, among others);

- thorough assessments should be made to consider the number of people needing financial support;
- when spousal support is needed, it should be dealt with on a case-by-case basis;
- there should be more consideration for the other (supporting) parent's financial capabilities;
- there should be DNA testing at birth to ensure that the parent is supporting only their biological children; and
- children should not be used as a profit centre and support should only be given on the basis of the children's needs.

Table 1: Organizations Represented at the Ottawa Workshop

Child Welfare League of Canada
Child/Youth Advocate
Children's Aid Society
ENDES
Entraide Pères-Enfants Séparés
Everyman Magazine
Family Service Canada
Father Craft
GRAND Society
Single Father's Network

Table 2: Organizations Represented at the Toronto Workshop

African-Canadian Legal Clinic
Canadian Children's Rights Council
Canadian Committee for Fairness in Family Law
Catholic Children's Aid Society
Centre for the Study of Civic Renewal
Children's Rights Council
Children's Voice
Community Legal Education, Ontario
Divorce and Defense Strategies
Equal Parenting of Durham
Equal Parents of Canada
Ex-Fathers
Families in Transition, Family Service Organization of Toronto
Family Conflict Resolution Services
Fathers are Capable Too

Table 2: Organizations Represented at the Toronto Workshop (cont'd)

Fathers for Justice
Fathers with Rights
GRAND Society
Human Equality Action and Resource Team
Justice for Children and Youth
Kids Need Both Parents
Mothers Without Custody
Non-Custodial Parents of Durham Region
Ontario Provincial Police
Parents Without Partners
Parents Without Partners, Rosedale Chapter
Rainbows Spectrum
Second Spouses of Canada
Toronto Police Services, Community Policing Support Unit
Women of the Métis Nation of Ontario

Table 3: Organizations Represented at the Thunder Bay Workshop

Children's Aid Society
Faye Paterson Transition House, Crisis Homes Inc.
First Step Women's Shelter
Geraldton Family Resource Centre
Northwestern Ontario Women's Centre
Thunder Bay Multicultural Association

Table 4: Organizations Represented at the London Workshop

Balance Beam
Barristers and Solicitors
Centre for Children and Families in the Justice System of the London Family Court Clinic
Changing Ways, London
Children's Aid Society, London and Middlesex
Dalhousie Place
Family Advocacy Network
Family Mediation Canada
Family Mediation Centre
Family Service, London
Ingamo Family Homes Woodstock Inc.
London Battered Women's Advocacy Centre
London City Police Service
London Second Stage Housing Corp. Women's Shelter
Madame Vanier Children's Services
Merrymount Children's Centre
Monsegnorini Feeney Centre
North End Children's Centre
Nova Vita Women's Services
Ontario Provincial Police, Western Region Headquarters
Parents Without Partners
People for People
REAL Parents for Justice
St. Thomas-Elgin Second Stage Housing
Thames Valley District School Board
Women's Emergency Centre Woodstock Inc.
Women's Rural Resource Centre of Strathroy and Area

INTRODUCTION

Workshops on custody and access were held in Charlottetown on June 5, 2001, and Summerside on June 6, 2001. A third consultation had been scheduled for June 4, 2001, in Montague, but was cancelled due to a lack of participants. In total, 27 organizations were involved in the workshops, along with one public participant representing the Francophone community. A list of the participating organizations is provided in tables 1 and 2.

The following topics were discussed:

- best interests of children;
- roles and responsibilities of parents;
- family violence;
- high conflict relationships;
- meeting access responsibilities;
- child support in shared custody situations;
- impact of access costs on child support amounts;
- child support obligations of a spouse who stands in the place of a parent; and
- existing child support guidelines.

Participants highlighted their wish to have a youth consultation in Atlantic Canada for rural youth.

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

What are children's needs when their parents separate?

Participants identified needs (which, if unmet, would have a negative impact on the children) specific to the children, the parents, and ways in which parents could contribute to their children's well-being during the separation and divorce process.

Children's Needs

Participants said that children need physical, emotional and financial safety. They also said that children need time to grieve the loss of their family. Children should have the freedom to express their feelings about the changes occurring in their lives. Children's best interests include their emotional health, and for this reason they should not be involved in the court-based divorce process if at all possible. However, it was also felt that children should be included in discussions about the future (when this is appropriate for their age and level of maturity), although not in a decisionmaking capacity. Children also need to maintain their connection to the wider community.

Children need resources (in both official languages) to help them cope with the divorce and the grieving process. Such resources might include mediation sessions in the schools, community organizations and professional counselling. In particular, one participant suggested a course on "what to expect when your parents are divorcing." It was acknowledged that some of these resources currently exist, but that most people are unaware of them. Therefore, these resources needed to be better publicized, perhaps through the creation of an index that could be made available on-line.

Some participants said that a child advocate might be one way to promote the best interests of children throughout the divorce process. They also said that professionals in contact with children need to better understand the dynamics of violent relationships and their effect on children.

Parents' Needs

Participants also discussed the needs of parents going through a divorce. The needs of children are tied to the needs of parents because the children's response to divorce often reflects the parents' response. Two factors complicating this issue are the existing parent-child relationship and the potential for blended families.

Participants said parents should remain focused on the interests and needs of their children. Parents must also have their access problems resolved and at a minimal cost (free if possible), and have orders related to the divorce enforced. It was acknowledged that a mechanism is needed to help parents with this. Also, more legal aid for family law is necessary and there should be a 1-800 number for legal aid to make access to funding easier. Participants also said there were some issues that the law cannot manage (for example, emotional well-being), and that other resources are needed to support parents going through a divorce. It was suggested that the Family Conflict Referral Service would be a good starting point for parents wanting access to those services.

How Parents can Contribute to Their Children's Well-being

Participants offered suggestions about how parents could ensure that their children's needs are being met. They felt that consistency and stability are key issues in parenting, in daily routines and in the relationship between the children and each of their parents. Furthermore, it was felt that open and honest communication between parents, and between parents and their children, would be in the children's best interests. However, participants emphasized that children should be kept out of conflicts between parents.

Participants recognized that changing the *Divorce Act* could have an impact on existing funding for resources. They also asked where the funding would come from to pay for the resources and services they identified as important to meeting the best interests of children.

Codifying the Best Interests of Children

Participants differed on whether listing the factors in the *Divorce Act* that were in the best interests of children was a good idea.

Participants who said codifying was a good idea argued that the existing legal provisions do not address the access needs of non-custodial parents and are difficult to explain to parents. This is because of the large body of case law involved, which is neither easily accessible to the public nor easily understood by the public. Case law is also continuously evolving, which makes explanation even more difficult. Participants concluded that codifying these factors might improve the enforcement of all court orders relating to divorce proceedings.

Participants who felt codifying was not a good idea argued that case law is sufficient to bring these factors into play during proceedings. Furthermore, they felt that codification would limit the scope of discussion about best interests in the courts to only those items specified in the legislation. Finally, participants said that enforcement issues could be addressed without changing the existing legislation. Some participants also stressed that in most situations it is unnecessary to require parents to use services such as counselling or mediation, and that better publicity about available courses and services would serve much the same purpose.

ROLES AND RESPONSIBILITIES OF PARENTS

What factors enable good parenting after separation or divorce?

Participants said that better parenting after separation or divorce depends on the relationship between the parents, the parents as individuals, and the relationship between parents and their children. The group also discussed what to do when one parent is not interested in continuing to be a parent to their children after the divorce.

Parents' Relationship

Participants said that the parents' relationship after separation or divorce should focus on the needs of the children. This could entail sharing parenting duties when possible, cooperating to solve problems and recognizing that the children need to spend time with both parents. Both parents should commit to a parenting agreement and respect the terms of any agreements coming out of the divorce proceedings. Participation in alternative dispute resolution would help parents develop these agreements and reduce dependency on the legal system and expensive lawyers. Parents need to respect the rules and routines established in the other parent's home and try to maintain a similar structure for the children in each home. That said, parents also must recognize that they cannot control what goes on in the other parent's home. Divorced parents must develop a healthy and non-violent relationship with one another. Participants recognized that the continued support of the other parent was an important factor in successful post-divorce parenting.

Parents as Individuals

As individuals, parents should be able to separate their role as parent from their former role as spouse. They must give themselves time to grieve for the demise of their relationship and recognize that their children continue to need both parents. Participants also identified economic security as an important factor contributing to good parenting after a divorce.

Participants said that parents need to recognize and accept their control over the divorce process. Should the situation arise, parents must be conscious of the impact of their second family on the children of their previous relationship.

The Parent-Child Relationship

Participants said that parents should build healthy and non-violent relationships with their children. Parents should be careful not to use the children as go-betweens or to manipulate the other parent. Children should be kept out of disputes between the parents and should not be involved in financial discussions (for example, about child support payments).

When One Parent is Uninterested or Uninvolved

Participants recognized that all of the above apply primarily when both parents want to continue to parent their children after the divorce. When one parent is absent or is uninterested in post-divorce parenting, that parent should not be forced into a relationship with the children because it would not be in the children's best interests. In such cases, the children will need help dealing with the absent parent's rejection. If the absent parent wishes to re-establish contact with his or her children, the visits should be supervised at first. Participants acknowledged that allowing the formerly absent parent to have access might be setting the children up for further rejection, but no one had any suggestions for avoiding that outcome.

Awareness of Existing Services

There was general agreement among workshop participants that the public is not aware of all the services available in P.E.I. to support parents during divorce, and that the discussion guide did not list all of the available services. The police, who are often on the front line when dealing with domestic conflict and issues, are also not aware of all the services. Participants who represented service organizations brought up the difficulty of advertising their services because they focus on an unpleasant topic, because of the need to respect client confidentiality, and because they lack the necessary financial resources. Participants also noted the problem of people expecting services where none exist, sometimes because they have seen television programs showing services available in other jurisdictions.

Improvements to Services

Central Point of Contact

Participants discussed the need to establish a central point of contact for referrals to services. The Community Legal Information Association, a Charlottetown agency, provides this service to the community. Participants said that schools would be a good point of contact for children, even though some parents react negatively to what they view as "interference" by the school. Schools are also already overstretched in terms of the resources they are trying to offer children.

Services Needed

Participants identified the following needed services:

- training in problem solving and other dispute resolution services;
- counselling to help parents understand the needs of their children and for people establishing blended families;
- access to legal aid, both an expanded service and a 1-800 number for easier access;
- a link between Child and Family Services and family therapists;
- supervised access and exchange centres; and
- French-language services.

The participants identified the following services that are needed for children:

- counselling to help them cope with their feelings and fears;
- education to help them with their own future parenting endeavours; and
- a system that gives children a voice throughout the process; a child advocate might fill this role.

One suggestion was to look at the Child and Youth Network established in Cape Breton in 1995. A similar initiative in P.E.I. would reduce duplication of services. Such an initiative could be housed on the government Web site or through access centres, which already exist.

Some participants also recommended that services be offered at a cost that reflects the reduced disposable income of most single parents. Participants also emphasized that services that may be appropriate for non-violent families could be dangerous for abused women and children.

New Terminology

Custody and Access

There was general agreement that the terms *custody* and *access* should not continue to be used. It was felt that *custody* is a confusing term because it is defined differently in different family law situations. Furthermore, the terms imply that children are property, create a power struggle, and foster an attitude of winners and losers. These negative connotations stand in the way of children developing strong relationships with both parents.

However, participants also made the point that moving away from the current terms might create confusion about child support issues. Furthermore, it was noted that option 2, which suggests broadly defining the term *custody*, retains the language used in the Hague Convention on the Civil Aspects of International Child Abduction, which is an advantage.

Shared Parental Responsibility

The term *shared parental responsibility* also raised some concerns. Participants said that the term is just as ambiguous as *custody*, and that in a worst-case scenario (for example, involving family violence) the term *shared parental responsibility* might not allow for the legal protection of the children from one of the parents. The word *shared* also implies property or ownership. Some participants said that this option would limit the decisionmaking powers of the primary residential parent, which they saw as a disadvantage.

Shared Parenting

Participants said the term *shared parenting* might imply a 50-50 parenting arrangement to some people and might, therefore, affect child support decisions. Other participants said that this terminology would make divorce disproportionately difficult for low-income women or others who would find it difficult to go through a lengthy court process to clarify a shared parenting arrangement.

Impact of New Terminology

In general, participants seemed to feel that what is needed is a new approach to the issue and that, although changing the vocabulary might help, it cannot accomplish the task alone. On the other hand, it was acknowledged that terminology has a strong impact on how courts function and approach issues, even when it does not affect how the general public perceives divorce and separation very much.

Criteria for Assessing New Terminology

Participants suggested criteria for assessing any new terms being considered. They said these terms should be clearly defined, which would be an improvement over the status quo, and take into account the worst-case scenario. Whatever the wording used, the responsibilities or tasks associated with parenting must be clearly attached to one parent or the other or both, according to their capabilities. It was felt that the "safety template" (that is, physical, emotional and financial safety) would be a good basis for developing new terminology.

Alternative Terminology

Participants brought forward some alternative terms: *parenting plan*, which incorporates custody and access, along with parental responsibilities, and is forward-looking, and *responsibility to the child,* which focuses attention on the needs of children and takes the parents out of the equation.

Looking at the Law

The discussion around the options presented in the discussion guide echoed many of the points raised above about new terminology. In general, participants said that simply replacing one term with another would not improve the situation. A change of approach is needed, and new terminology in the law should stem from that approach.

Ensuring Children's Safety

Some participants suggested that the starting point of the law should be to ensure the safety and best interests of children (as opposed to a specific form of parenting, such as shared parenting). With the well-being of children as the goal, the people involved could then focus on how best to achieve this, and various options, including those presented in the discussion guide, could be discussed.

Other participants said that, without knowing how the terms were to be applied, it was not possible to discuss the various options. Some also mentioned that option 5 was unrealistic because it describes a situation that does not even exist in non-separated households.

FAMILY VIOLENCE

How well does the family law system promote the safety of children and others in situations involving family violence?

Some participants said that P.E.I. had very good initiatives in place with area of family violence, but that more resources and funds were needed. Others said that the family law system does not promote the safety of children very well. In general, participants said that a more holistic approach, involving legal and community services and resources, might better meet the needs of children in situations of family violence.

Improvements to Services

Participants said that extended family services would help in situations of family violence. Education about family violence was also identified as a necessary resource to prevent further occurrences. Other points were that providing these services would require more funding and that services need to be made available sooner rather than later.

Participants said that service providers should err on the side of caution and try to protect victims while keeping in mind the possibility of false allegations (which, they emphasized, are rare). One way of doing this would be to set up an interim arrangement while an investigation takes place. Services providers also need to synchronize their activities to ensure that no one is overlooked or neglected.

Needed Services

Participants highlighted the need for mediation, counselling of both parents and children, and parent education programs. There was no agreement about whether these programs should be mandatory, although the point was made that forcing people into mediation is usually not effective. Participants also said that parenting courses should be more accessible (by providing child care and transportation, for example) and relevant (by having specific courses for parents in violent situations). Participants also noted that teenagers who have experienced family violence may require intervention to ensure that they do not become violent themselves. Finally, participants said that supervised access centres are needed.

Education

Participants said that people in the wider community who come into daily contact with families should be better educated about family violence issues (including the *Victims of Family Violence Act*) and appropriate responses. Specifically mentioned were justice system workers and members of the Attorney General's staff. It was also noted that police intervention has successfully mitigated violence, and that community support is very important when resolving issues of family violence.

Looking at the Law

Resources for Legal Professionals

Participants suggested that judges should have more guidance on dealing with family violence. Judges need guidelines on the safety of children and a clear legal definition of abuse. The law should discuss children being "exposed to" violence rather than "witnessing" violence because this better reflects the reality of such situations and the harm they do to children. Participants also said that the law must acknowledge the potential for re-offence and for increasingly severe violence, and that a pattern of violence does not necessarily end once the couple has separated.

Participants pointed out that there is a only limited connection between family law and criminal law. Information on family violence that surfaces in criminal court is often not brought up during family court proceedings. A coordinated effort is required between the two areas: all information should be brought from criminal court to family court, not just the fact of the conviction.

Acknowledging the Impact of Family Violence and Protecting Children

Participants said that the courts must acknowledge that family violence has a negative effect on the parent, the children and the wider community. One way of doing this would be to allow victim impact statements to be read in family court.

Participants said there was a role for a child advocate to protect children throughout the court process, and also for psychological evaluation. Participants emphasized that, in their experience, false allegations of violence are very rare. Therefore, when allegations of violence are made, the judge should be able to make interim arrangements for the protection of the children immediately.

Discussing the Options

Regarding the options in the discussion guide, some participants said that family violence should be made a specific factor to be considered (option 3). Others said that a combination of options 3 and 5 could be used, because they are not mutually exclusive.

HIGH CONFLICT RELATIONSHIPS

How well does the family law system promote the best interests of children?

Participants said that the family law system does not promote the best interests of children when their parents have a high conflict relationship. This is because the law does not consider the children's needs. The parents return to court over and over again, which draws financial and emotional resources away from the children. In high conflict relationships, children are often used as pawns by their parents. Parents in high conflict relationships often do not recognize that their children have needs that should take priority over their own.

Improvements to Services

Participants said that parenting courses and family legal aid would improve the situation for children, as would publicity about and accessibility of other existing services. Mediation was also proposed as a needed service, but with the caveat that it may not be successful because the parents are addicted to their conflict and do not really want it resolved. The *Positive Parenting From Two Homes* book and program, which has been used successfully in P.E.I., was recommended and should be made more widely available.

Looking at the Law

Participants said that the law must keep the best interests of children as the priority. This raised the question of whether a high conflict relationship between the parents could in itself be considered a form of child abuse, and if so whether other related legislation should be amended.

The participants discussed the possible advantages and disadvantages of including precise definitions in the law, mandating the use of services (such as mediation and counselling) and explicitly defining areas of joint and separate responsibility. Some participants said that such clarity would reduce points of friction between parents, but others said that it would just create more opportunities for conflict. Another point was that codifying issues might cause more problems, because there would inevitably be cases that do not "fit" the legislation.

Some participants said it was more important for the law to make specific provisions for violent situations rather than for those that are considered high conflict. The participants noted that detailed court orders would help reduce the opportunities for misinterpretation and abuse of those orders.

It was pointed out that all of the options discussed have financial and human resource implications, since high conflict parents spend more time in court than others.

MEETING ACCESS RESPONSIBILITIES

Problems with Access

Most of the problems with access stem from difficulties enforcing either access or child support agreements. When a child support agreement is not enforced, the custodial parent may feel that denying access is the only way to force compliance. When access agreements are not complied with, there is little the courts can or will do to enforce them. Going to court is an expensive and lengthy process and may not resolve the situation, since access may be granted for a short period and then be withdrawn again, returning the situation to court. This process makes the discussion adversarial and increases the likelihood of conflict. At the same time, the access parent perceives the justice system to be unfair, loses faith in it and may turn to illegal options.

Another problem with the current situation is that the province only enforces those agreements that have positive financial implications for it. Child support agreements are rigorously enforced because they reduce the province's social security obligations. Access agreements are not as enforced because they have no financial impact on the province.

Improving the Process

Participants had several ideas about how the process could be improved to prevent problems concerning access responsibilities. An initial screening process could identify violence or substance abuse problems. Both parents should be educated about the importance of access to children and the children's right to see both parents. Children should have an advocate of some sort within the system, who should be supported by social workers and other agencies. Orders emerging from the process should be gender-neutral and enforceable (i.e. the system should commit to the order, as should the parents). Some participants also felt that a deterrent was necessary. Parents who denied access should be fined and the access parent should be given extra visitation time. Parents who do not use their access should also be fined.

Participants said that non-court options should be available for resolving access disputes. Mediation is one such option. However, mediation requires the willing participation of both parents, which may not always be possible. Mediated agreements, or agreements resulting from other non-court processes, could be filed with the court and therefore made legally binding.

One option for improving access enforcement would be to adopt the maintenance enforcement model of a monthly open house, so parents could come in to discuss their access problems. Either the parents would come to an agreement then or they would go immediately before a judge who was available to hear cases on that day.

Participants also discussed what to do when parents do not use the access they have been granted. Some participants said that this was an issue of power and control. Others questioned whether it is acceptable to strictly enforce the provision of access without strictly enforcing its use. Participants said that when a parent wishes to resume access to their children, the process should begin with supervised visits.

CHILD SUPPORT IN SHARED CUSTODY SITUATIONS

What factors should judges look at when deciding whether the shared custody rule applies?

Problems with the Current Process

Several problems are associated with the current system (which uses time as a deciding factor). These include the fact that non-custodial parents may demand more access time solely to reduce the child support that they pay, that custodial parents may deny access because otherwise they would lose needed income, and that sometimes parents can incur significant costs to exercise their access, even when that access is not for more than 40 percent of the time. Participants also noted that the situation becomes even more complicated in blended families.

Time as the Deciding Factor

Arguments in favour of using time as the deciding factor were that when a parent has custody more than 40 percent of the time, it implies that both parents are incurring costs associated with custody and that it is difficult to assess which expenses are directly affected by shared custody once a roughly 50-50 split is reached (the opportunities for reducing expenses when the children are with the other parent are not significant).

Arguments against using time as a factor were that child support is a financial issue only and that spending time with the children is a separate responsibility, above and beyond financial support. Using time as the deciding factor also implies that parents are buying access to the children. Participants asked whether reduced child support payments were an incentive for parents to spend more time with their children and whether this was appropriate. Some participants said that if access is being used on weekends, evenings and holidays, the non-custodial parent may meet the 40 percent time requirement while the custodial parent still has significant costs (for example, child care and lost earning potential). Other participants said that weekday costs (such as child care) were balanced by weekend costs (such as extracurricular activities). Finally, participants said that children might face unwanted restrictions in their activities on weekends and evenings if one parent is trying to ensure that he or she has custody 40 percent of the time in order to reduce the support payments. This situation could become worse when the children become teenagers and have their own outside relationships.

Cost as the Deciding Factor

The argument in favour of using cost as the deciding factor was that some parents incur significant access costs even though they do not have shared custody. If cost were the deciding factor, participants felt that judges would have to determine which costs were legitimate (for example, clothing, health care, recreation and education). It was also felt that the key to reducing child support should not be whether the non-custodial parent incurs costs, but whether the custodial parent's costs are reduced.

Finally, participants said that perhaps both time and costs should be considered. Time would be a used as a threshold only, after which expenses would also be taken into account. Participants said that whichever factor was used, it needed to be clearly defined in the law.

How should child support be determined under shared custody?

Participants said that whatever method is used to determine child support for shared custody arrangements, it should be predictable, consistent and simple so that people can reach their own agreements outside of court. Participants also said that leaving the decision to the judge's discretion was perceived as unfair because people in similar situations might get very different results. It was also felt that judges would benefit from having guidelines on which to base their decisions.

Alternative to the Current Method

One option participants suggested was to use the minimum standard of living for a child (derived from Statistics Canada information) as a basis for the child support amount. This would ensure a basic standard of living for the children in shared custody situations and would avoid the current problem of the receiving parent's standard of living decreasing to an unacceptable level because he or she received less child support. Another suggested option was to consider expenses as a proportion of overall income, rather than simply net expenses. This would recognize that one parent may have a significantly higher income than the other and, therefore, be able to spend more on the children.

On the subject of deviating from the existing guidelines in a shared custody situation, participants said that there should be a formula for deciding when to deviate, how to deviate and by how much.

Reviewing Results of Different Systems

Participants thought that a review of the systems across Canada might be helpful. Participants also said that the solution adopted must take into account that women usually experience a reduction in income after separation and incur most of the costs related to child care.

IMPACT OF ACCESS COSTS ON CHILD SUPPORT AMOUNTS

Should the child support guidelines be changed to introduce a new way to take into account unusually high or low access costs when determining child support?

Addressing the "High Access Cost" Situation

With regard to unusually high access costs, participants said that the existing guidelines were helpful but that high costs should be more explicitly included. Compensation for high costs should be tied to proof of access (rather than allowing the parent to claim high access costs, gain a reduction in the amount of child support paid, and then not use the access after all). One suggestion was that access and associated costs should be defined as a shared responsibility. Access would become an obligation of both parents and a right of the children. This would separate access from child support. However, it was also pointed out that having to bear some of the costs might affect the willingness or ability of the custodial parent to facilitate access.

Participants also suggested that the existing definitions of *undue hardship* and *extraordinary expenses* be clarified or better used by judges to ensure consistent judgments.

Addressing the "Low Access Cost" Situation

Participants said that low access costs resulted from parents not using their access. Currently, there is no way to compensate custodial parents unless they can prove undue hardship (see discussion above). A participant suggested that support orders could split some costs 50-50, which would mitigate some of the burden on the custodial parent.

Child Support Calculation Software

Participants said that situations involving both unusually high and low access costs should be reviewed periodically to take into account changes in access use or costs. Participants mentioned that child support calculation is useful when determining the standard of living of children in both households, including blended families. However, this software requires information from both households. Finally, participants said, in general, a combination of guidelines and judicial discretion was appropriate for dealing with these cases, but that judges also need to be better educated about family structures and the costs of separation and divorce.

CHILD SUPPORT OBLIGATIONS OF A SPOUSE WHO STANDS IN THE PLACE OF A PARENT

Should the child support guidelines be changed to provide more direction to parents and judges about whether a stepparent should pay child support, and how much he or she should pay?

Participants questioned whether the parent's primary responsibility should be to his or her "first" set of children or to all of the children, regardless of the relationship. Participants did say that the total paid in child support by all parents (per child) should not exceed the amount specified in the guidelines. Participants also noted that most people are completely unaware that they could be considered to be standing in the place of a parent or of the implications of that status. Finally, participants asked whether stepparents who are expected to pay child support are also allowed to have access to the children.

EXISTING CHILD SUPPORT GUIDELINES

Some participants said that changes in tax legislation have had an impact on the payment of child support. The previous arrangement, under which the paying parent could "shift" the tax burden of child support payments onto the receiving parent (who then paid tax in a lower bracket) was more beneficial for both parents than the current situation, under which this is no longer possible. Another point raised on this topic was that the amounts in the guidelines for incomes of more than $150,000 are not realistic and need to be revised.

Table 1: Organizations Represented at the Charlottetown Workshop
Canadian Bar Association
Charlottetown City Police
Community Legal Information Association
Conflict Resolution Co-operative
Corkum & Crozier, Accountants
Department of Education
Family Mediation Services
Family Resource Centre
Office of the Attorney General of P.E.I.
P.E.I. Advisory Council on the Status of Women
P.E.I. Department of Health and Social Services
P.E.I. Fathers
P.E.I. Transition House
P.E.I. Women's Network
Pownal House
Private law practitioner

Table 2: Organizations Represented at the Summerside Workshop
City of Summerside Police Services
Office of the Attorney General of P.E.I.
P.E.I. Policy Advisor on the Status of Women
Prince County Family Service Bureau

INTRODUCTION

The consultation on custody, access and child support took place in Quebec in the spring of 2001 under the auspices of the Quebec Ministry of Justice. It involved focus groups run by Léger Marketing and documents prepared by experts hired by the ministry. Afterwards, many agencies and institutions working in family law were brought together for a conference. The consultation's main topics for discussion were:

- roles and responsibilities of parents;
- meeting access responsibilities; and
- child support.

Custody, Access and Child Support: Putting the Children's Interests First was held at the Hôtel Québec de Sainte-Foy in Quebec City, June 8, 2001. The session lasted the entire day, and comprised three workshops and two plenary sessions. Prior to the conference, participants received documentation prepared by the Federal-Provincial-Territorial Family Law Committee, as well as the *Guide de discussion pour le Québec* prepared by experts under contract to the Ministry of Justice.

Dominique Goubau acted as conference coordinator and led Workshop A on the roles and responsibilities of parents. Sylvie Matteau led Workshop B on meeting access responsibilities. Jean-Marie Fortin led Workshop C on the issue of child support.

The conference began with Mr. Goubau's opening remarks, which put the day's work within the perspective of the federal-provincial-territorial consultation. In a plenary session at the end of the day, the three workshop leaders reported on the topics discussed.

This report attempts to respect the plan established by IER Planning, Research and Management Services, under contract to the Department of Justice Canada. However, all the questions in the plan were not necessarily dealt with during the sessions, and some questions that were not part of the plan were nevertheless discussed. As well, the workshop leaders used the Quebec discussion guide (April 2001), which adapts the Family Law Committee's consultation document as a working paper to better reflect the legal and social realities in Quebec. This explains why this report does not necessarily respect IER's plan to the letter. It should be emphasized, however, that the bulk of the questions dealt with in the IER plan are also found in the Quebec discussion guide. Consequently, the workshops were able to respond to the most important concerns raised in the IER plan.

Participants were invited to send in a memorandum or written remarks to the conference organizers, and several did. The final date for submissions was June 15, 2001. This report presents a review of the discussions that took place on June 8 and adds certain information contained in the submissions. It also links the main results from the conference with those from the focus groups and follows the conference's division of the discussion topics.

WORKSHOP A: ROLES AND RESPONSIBILITIES OF PARENTS

Workshop leader	Dominique Goubau
Secretary	Hélène Fortin

PARTICIPANTS

Association des avocats et avocates en droit familial du Québec (Suzanne Moisan)
Association Lien Pères-Enfants de Québec (Richard Pomerleau)
Association masculine irénique et coalition des associations pour la condition paternelle (Bernard Courcy)
Barreau du Québec (Michel Tétrault)
Comité des organismes accréditeurs en médiation familiale (Louisette Dumas)
Commission des services juridique (Michel Tessier)
Confédération des organismes familiaux du Québec (Paule Clotteau)
Fédération des association de familles monoparentales et recomposées du Québec (Claudette Mainguy et Jacinthe Lavoie)
Femmes autochtones du Québec (Fernande Bacon)
Fédération des unions de familles (Marie Rhéaume)
Groupe d'entraide aux pères et de soutien à l'enfant (André Campeau)
Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec (Gérald Schoel)
Ordre des psychologues du Québec (Francine Cyr)
Ordre professionnel des travailleurs sociaux du Québec (Pierrette Brisson)
Regroupement provincial des maisons d'hébergement et de transition pour femmes victimes de violence conjugale (Louise Riendeau)

OBSERVERS

Conseil de la famille et de l'enfance (Jean-Pierre Lamoureux)
Conseil du statut de la femme (Lucie Desrochers)
IER, consultant for the Department of Justice Canada (Raymond Vles)
Ministère de l'Enfance et de la Famille (François Beaudoin)
Ministère de l'Emploi et Solidarité sociale (Josée Tremblay)
Department of Justice Canada (Rose Gabrielle Birba)
Ministère de la Justice du Québec (Denise Gervais)

THEMES 1 AND 2. CURRENT SITUATION AND REVIEW OF SERVICES

This topic was presented differently from how IER had planned it in order to take into account the problems that are specific to Quebec, and because the workshop mainly brought together specialized practitioners as well as representatives of agencies involved in the field. It was therefore unnecessary, for example, to verify the participants' knowledge of the existence of services. The questions below, then, are those set out in the Quebec discussion guide. After each question, the report presents the participants' main responses and positions, as well as any consensus reached during those discussions.

Question 1.1 Are people who separate or divorce sufficiently informed about the consequences that result from exercising parental authority?

Question 1.2 How can we provide better information on this subject, if it is needed?

Participants agreed unanimously that people who separate or divorce are poorly informed about the consequences of their subsequent parental roles as well as about the exact legal ramifications of custody orders. People do not understand exactly what it means to award custody to one parent. Often parents believe that an order for sole custody strips the non-custodial parent of his or her role with the children. **All participants identified this as a serious problem that needs attention urgently**, while realizing that it is difficult to contact people easily.

It is interesting that this assessment is shared by the parents who met in the focus groups organized by Léger Marketing. Most parents associated the notion of sole custody with the idea of excluding the non-custodial parent from the children's upbringing.

In its written submission, the Ordre des psychologues du Québec explained that the legal jargon on this question creates a great deal of confusion in the minds of the people concerned.

One participant emphasized that the links between federal and provincial legislation are complex and that there needs to be a common thread between the two, as well as better correspondence between the situations of parents who are married and those who are not.

All participants agreed that major efforts must be made to better **inform** the parties and to **educate** them about exercising their parental roles (through, for example, parent groups or seminars on co-parenting). These information and education initiatives should also target professionals (such as social workers, psychologists, mediators, lawyers and judges).

One participant stressed the gap that can exist between common and expert knowledge. He suggested that what he calls "the subjectivity of experts (psychologists, sociologists, anthropologists and legal scholars)" should be studied, since it constitutes an important bias in conflict resolution and reorganizing parental roles.

All participants supported the suggestion of introducing into the legislation a lawyer's duty to discuss with his or her clients the redefining of parental roles after separation or divorce and the appropriate information and education services that exist.

They also agreed there should be compulsory information and education sessions about the redefining of parental roles, the effects of separation on children and, in general, the legal and psychological effects of separation and divorce. This essential information should be given in co-parenting seminars before proceedings begin, since people are often badly informed or misled by friends, relatives or acquaintances. Moreover, because parents who are under pressure or in psychological distress quickly forget the information they are given, it is all the more important that the information delivery be well organized, and that the information itself go beyond mere legal information. However, one participant was against compulsory information sessions, because women who are victims of spousal violence are sometimes led to make decisions that are contrary to their own and their children's best interests in these situations.

In its submission, the Chambre des notaires emphasized that "mediation is undeniably the best service that currently exists for responding appropriately to the need for information," and that all couples who are going through a breakdown of their relationship should be directed to this service.

Several participants stressed the importance of using instructional tools that make the information easy to understand and reaching people in their own neighbourhoods, in places such as the local community service centres (CLSC). One participant felt the role of education should be particularly emphasized for the people who, in principle, will receive legal aid.

Among the information tools mentioned were:

- flyers available at strategic places (CLSCs and businesses, for example);
- videos, including children's accounts of separation and divorce;
- television programs;
- television or radio spots (similar to the ones currently being shown from the Société de l'assurance-automobile du Québec);
- small-group information seminars;
- a "collage" of information in various media; and
- viewing rooms set up in court houses.

In its written submission, the Barreau du Québec suggested, among other solutions, replacing the current mediation information session with one on co-parenting.

Question 1.3 Should parents who are separating or divorcing be encouraged to stipulate precise arrangements for exercising parental authority in their agreements? Should this be compulsory?

Participants were in complete agreement on the principle that precise arrangements for exercising parental authority should be stipulated. The degree of precision depends on the level of conflict. The more contentious the relationship, the more precise the court order should be, particularly in the case of spousal or family violence. Everyone agreed that when parents are obliged to specify and describe the way their roles will be organized, they are also obliged to think about them and anticipate possible difficulties.

In its written submission, the Ordre des psychologues suggested that parents could be made to present a plan for apportioning parental responsibilities that clearly defines how they will share in all aspects of their children's lives. Exceptions should be made, however, in cases of spousal violence or in high conflict situations, for which other arrangements should be devised.

Certain participants said it is important to avoid having situations and arrangements that become "set in stone" the moment they are developed. Therefore, agreements and court orders need to stipulate ways to revise the parenting arrangements.

Several participants thought the clearer the arrangements are, the more chance the agreements and court orders have of being respected.

Participants suggested that stipulating ways of revising parental responsibilities in agreements, and anticipating moments in the children's lives when a re-evaluation of the situation would normally occur, are important factors in reducing conflict.

In addition, participants saw the obligation to stipulate post-separation arrangements as a response to question 1.1, which concerns the fact that separated and divorced people are currently poorly informed about the real consequences of the breakdown on the roles of each parent.

However, in its written submission, the Barreau du Québec stated that parenting plans should not be compulsory. In some cases the parents cannot agree on certain questions, so it is better not to bring these up in order to avoid aggravating the situation.

It is interesting to note that members of the youth focus groups who had lived though separation emphasized that the young people themselves attach great importance to parenting plans. The final report on these sessions from Léger Marketing, which ran the sessions, mentioned this as one of the main points raised by the youth: **"A custody agreement that is clearly defined in terms of residence and access schedule with both parents has a reassuring effect on the child and is considered a definite advantage by the majority of participants."** These focus groups demonstrated that vague agreements can contribute to deteriorating relationships and reduced contact between the children and the non-custodial parent (usually the father).

Question 1.4 What services should be offered to encourage this kind of agreement between parents?

Some participants suggested that it would be appropriate to expand already existing mediation services. Separated or divorced parents should know that they can return to mediation to settle co-parenting problems and that the usefulness of mediation does not end with the initial arrangements made after separation.

The representative of a fathers' association stressed the difficulties that many men currently encounter when they look for help or information at institutions such as the CLSCs. He criticized the shortage of help specifically for divorced and separated fathers, as well as the lack of financial resources for associations who do help fathers.

The Ordre des psychologues suggested that the delivery of information should be improved and said that people who need and want this information are usually in a highly emotional state, which must be taken into account. The Ordre recommended that a model agreement be made available (in flyers and publications), as is done with the information on calculating child support payments. It also suggested that various preventive measures be taken: wider distribution of information, production of documents explaining what is at stake in separation, distribution of a video in which children tell their stories, and encouragement of voluntary mediation. When parents do not put forward a plan, the court should set up a general framework for sharing responsibilities and send the parties to mediation to work out arrangements. In high conflict cases in which parents cannot come to an agreement, the Ordre des psychologues argued in favour of establishing services based on a therapeutic approach (parenting seminars, special seminars for violent or very high conflict situations, support and therapy groups for children and parents, therapeutic mediation in extreme cases, and appointing experts to evaluate parenting abilities).

Participants suggested the following services:

- parenting seminars;
- therapeutic support groups;
- therapeutic mediation;
- information initiatives within the framework of employee assistance programs (as is already done in certain places);
- information initiatives for both boys and girls in the schools (especially on parental roles); and
- parenting courses.

Participants particularly stressed the importance of ensuring the quality of the practitioners who provide information and organize educational sessions, which is unfortunately not the case now.

In raising the issue of budgetary constraints and the resulting difficulty of setting up the needed services, participants emphasized that questions must be asked about budget priorities, given that everything that is spent on prevention will save public money, ultimately ("prevention, not postvention").

The representative of a fathers' association raised the issue of the link between parenting and the workplace, saying that it is often difficult for a man to point out at work the constraints related to his role as a father. Another participant stressed the importance of improving understanding of the differences between men and women.

Question 1.5 When parents cannot agree, should the court stipulate precise parenting arrangements in the court order or should it continue to rely on the general and non-specific principle of "joint exercise of parental authority," the current practice in Quebec civil law.

Everyone agreed that it is very important to make precise parenting arrangements, because without them parents risk not understanding the actual legal effects of their court order. On the other hand, the Barreau du Québec emphasized in its written submission that if parents "cannot agree on the joint exercise of parental authority and on sharing parental responsibilities, only a statement of general principle should be included in the court order, unless the parties ask the court to settle a very specific situation."

THEME 3. NEW TERMINOLOGY

Question 2.1 Do you think using the terms *custody* and *access* is problematic or irritating?

Question 2.2 Should these terms be retained or replaced?

With regard to terminology, it became clear that a majority of participants not only found the current terms irritating and problematic, but also saw replacing them as an urgent need. Most participants thought that a change in terminology would result in a change in thinking and ways of doing things. They stressed that terms can be effective tools that lead people to think about solutions. These participants thought that the current terminology does not reflect the idea of co-parenting.

Two participants did not find the current terminology problematic or think that different terms would improve things. They felt the meaning of the terms should be better explained.

The Barreau du Québec said that the French term *droit de visite* should be replaced by *droit d'accès*.

The following criticisms of the current terminology were expressed by the majority of participants:

- The terms are derived from the penal system and have nothing to do with family.
- Giving custody to one person takes it away from the other.

- The terms represent a poor start for the future.
- They give the impression that there is a winner and a loser, but the children are the real losers.

A consensus was reached on the need to eliminate the expression "le tribunal condamne..." ["the court condemns..."] from decisions and court orders in family matters.
The focus groups organized by Léger Marketing demonstrated that **parents are generally opposed to the current terminology and that they favour expressions that reflect the importance of children benefiting from two parental models, maternal and paternal.** The majority of parents in the focus groups preferred the expressions *parental responsibility* and *sharing of parental responsibility*.

Question 2.3 If necessary, should other expressions such as *sharing parental responsibilities, usual place of residence, organizing living arrangements,* etc. be used?

Regarding the choice of new terms, several participants mentioned the importance of using legitimate sociological terms, because they must become securely fixed in people's minds. People should be wary of short-lived, trendy words that come from elsewhere.

Everyone agreed to the need for uniform terminology in order to avoid creating confusion in people's minds about the consequences of relationship breakdown, separation agreements and custody orders. Uniformity does not mean that the government is trying to impose a single model for organizing parental roles after the separation. Furthermore, any new terminology must be appropriate for all age groups.

Abolishing the terms *custody* and *access* would force the courts to be more specific about ways of reorganizing parental roles.

Participants made a number of suggestions for terms they felt would better reflect what people go through. However, no consensus was reached on any of these expressions:

- arrangements for sharing parental responsibility;
- life with the child;
- sharing life with the child;
- parental responsibility;
- sharing tasks and time; and
- parents will share their parental responsibilities in the following manner....

In its written submission, the Chambre des notaires stated that because the terms *custody* and *access* evoke conflict, mediators have for some time opted for the expression *sharing parental responsibilities,* which includes, in particular, the "child's usual place of residence."

Sub-question (not on the questionnaire)
Do you prefer the expression *parental authority* or *parental responsibility*?

All but one of the participants thought that the expression *parental authority* is out of date, that it refers to a power relationship and gives the impression that one of the parents (generally the father) is losing something. They would prefer that it be replaced by the expression *parental responsibility*, which is more clearly tied to the notion of sharing. One participant declared in addition that the expression *parental authority* has the effect on fathers of creating a sense of detachment.

One participant thought, on the other hand, that the two expressions must coexist, because they reflect the two very different dimensions of the parenting role. Parents can and must exercise authority over their children, because they are responsible for their upbringing.

The parents who participated in the focus groups generally felt that the expression *parental authority* was outmoded and that *parental responsibility* seemed more modern.

THEME 4. LOOKING AT THE LAW

Five options were presented for the participants' evaluation.

There was an immediate consensus that options 1 and 2 should be rejected.

The representatives of the three fathers' groups opted for option 5, the presumption of shared parenting. They said that the current rejection of fathers ought to lead to the introduction of this "positive discrimination."

All the other participants were in favour of option 3 or 4, or something in between. Several favoured the solution that maintained both parents' power to make decisions, while emphasizing the importance of specifying in the order the ways in which this parental role would be carried out, whatever decision is made about where the children are to reside.

Outside of these fundamental differences in opinion between the fathers' groups and the other participants, it is clear that all participants, in rejecting options 1 and 2, were in favour of a solution that gives concrete expression to the involvement of both parents. **All participants agreed that the co-parenting principle must be the basis for the solution that is ultimately adopted. There were, however, differences of opinion about the degree of involvement of the parents.**

Those who preferred option 3 stressed that it placed a priority on children's interests and, when compared to the other options, would make it possible to find solutions on a case-by-case basis. They noted that this option would allow the court to define specific terms and conditions for the parenting roles when necessary. Thus the Barreau du Québec stressed in its written submission that option 3, which reflects the situation in Quebec law (except that the expression *parental authority* is replaced by *parental responsibility*), is the most functional. Those who preferred option 4 put emphasis instead on the importance of stipulating precise arrangements for exercising parental responsibility in all cases, seeing in this encouragement for parents to think about the implications of their parental reorganization. This is the opinion of the Chambre des notaires, for example, which in its written comments submitted that option 4 would make it easier to take account of the fact that, in most cases, the sharing of parental responsibilities is not strictly equal.

In the focus groups organized by Léger Marketing, **a majority of parents were in favour of a solution giving priority to an almost equal sharing of the children's time between both parents, unless it is shown that this is not an appropriate solution considering the children's interests and the material conditions of each parent. They stressed that this course is only possible when parents demonstrate that they can communicate extremely well with one another.**

It emerged clearly from the youth focus groups that young people think that day-to-day parenting decisions should be made by the custodial parent (almost always the mother), but that major decisions (about school choice and health, for example) should always be made in concert by both parents and, at the very least, with the approval of the non-custodial parent.

THE BEST INTERESTS OF CHILDREN

Question 4.1 Should the notion of children's interests be more clearly stated in the legislation? If so, why?

Question 4.2 If this is necessary, which aspects of children's interests should be specified in a legal definition?

The Barreau du Québec's representative suggested that the notion could be defined better, but that its general nature must be maintained to enable the court to adapt to particular situations. According to the Barreau, a definition with too much detail would prevent a nuanced application of the notion of the children's interests, as well as the evolution of the concept.

Most participants shared this opinion and offered suggestions for a better definition. Some thought that the definition could include a reference to the parental roles assumed prior to separation, and mentioned the importance of maintaining links with siblings and grandparents.

In its written submission, the Ordre des psychologues pointed out that the definition of children's best interests should be based on several important principles: maintaining a positive image of the other parent and an attitude of respect during contact, avoiding having a particular parent become significant to the children, not making the children witness the parents' conflicts, and equal sharing of time with the children.

Two participants suggested that it is very difficult to get a consensus on the precise meaning of children's interests, but that a definition could at least stipulate that it is in children's interests that decisions concerning them be made in a climate of cooperation, respect and dialogue, rather than conflict.

"A climate of respect and not disparagement is necessary, because it is clear that what damages the children is conflict. We have to work on a climate of give and take."

This suggestion reflects certain concerns expressed by the young people in the youth focus groups. The final report from Léger Marketing highlights the following observation: **"Putting aside personal differences and putting the child's interests first arose spontaneously from the group as the most important suggestion for improving custody agreements."**

Question 4.3 Must the "maximum contact" and "friendly parent" principles remain unchanged in the law?

Question 4.4 Should the "maximum contact" and "friendly parent" principles be just two factors among many, thus enabling the courts to balance these principles with other important criteria related to the children's best interests?

Consensus was reached on the idea of keeping the principles in the legislation, while replacing the expressions *the most contact* and *maximum contact* with *maximizing significant relationships*.

However, certain participants said these principles should be two among many, which would make it easier to take into account high conflict or spousal violence situations. On the other hand, other participants thought that a presumption that favours maintaining contact must exist, since studies show children generally benefit from that.

SPOUSAL AND FAMILY VIOLENCE

Question 4.5 Regarding spousal and/or family violence as criteria to consider in determining custody and access, should the law:

- remain unchanged?
- include a general statement recognizing that children who witness violence between their parents are affected by it and that family violence is a serious threat to the safety of parents and children?
- state expressly that the judge can take spousal or family violence into account when making decisions?
- require that judges consider spousal or family violence when rendering their decisions?
- oblige the judge to restrict and/or control the contacts children have with the violent parent and limit the parental role of this parent?
- eliminate the idea that "the court must take into account the willingness of each parent to facilitate communication with the other parent"?

Theme 1. The Current Situation

The representative of the Regroupement provincial des maisons d'hébergement et de transition pour femmes victims de violence conjugale said that the law must be changed to include a clear statement that children bear the consequences of violent situations and that judges must take this into account. She did not go so far as to say, however, that a violent situation must automatically mean there should be no more contact. Judges must use their discretion, but must also investigate whether they are dealing with a situation of family violence. This participant felt that introducing a rebuttable presumption is an interesting idea. She emphasized the importance of clearly distinguishing family violence from spousal violence and not restricting the notion to physical violence or simply to cases in which there has been a criminal conviction. She regretted, in this connection, that frequently civil courts do not take a situation of spousal violence into consideration, even though there has been criminal conviction. She also stressed the fact that violence can be economic, verbal, psychological or physical, and the need to introduce measures and locations for supervision, so that access can take place safely for children and parents. The representatives of the Ordre des psychologues du Québec and the Fédération des unions de familles shared the opinion of the Regroupement provincial des maisons d'hébergement et de transition pour femmes victims de violence conjugale on these issues.

All the other participants, however, felt that the whole situation, including the history of spousal and family relationships, should be taken into consideration. They feared that singling out family and/or spousal violence in the law obscures other problems, such as parental alienation or false accusations of physical and/or sexual abuse, for example, and gives the impression that spousal violence is more important than any other problem. Several participants said that the law currently makes it possible to respond appropriately to violent situations, but that practitioners, including judges, must be more sensitive to this reality and better educated about it. In its written submission, the Barreau du Québec explained that subsection 16(9) of the *Divorce Act* (which stipulates that the court may take into account the misconduct of a party when that conduct is relevant to the ability of the party to act as a parent to the child) is an adequate legal tool to enable the courts to respond to situations of spousal violence.

The representatives of the fathers' groups stressed the almost insurmountable obstacle of accurately defining the notion of violence in a legal text. They also emphasized the issue of violence towards men.

Theme 2. Services

The representative of the Ordre des psychologues said that specialized seminars on spousal violence and children who witness spousal violence, and services to support and accompany children who are victims or witnesses of violence, should be included among the measures to consider. Talking is good for children and generally reduces the trauma they are experiencing.

A fathers' group representative regretted that services are so unbalanced, that it is much more difficult for a father to obtain effective help than it is for a mother.

All the participants denounced the glaring absence of government budgets and financing. This constraint affects current services and casts serious doubt over all future projects that need to be established if there is ever to be hope of responding effectively to this important problem.

One participant stressed the importance of creating protected places for children through "family shelters." Timing is often important and children can be deprived of one or the other of their parents simply because there is a lack of services. Another participant said that in cases of violence and conflict, channels that are both safe and swift need to be considered, which implies fast-tracking of legal proceedings in particular.

HIGH CONFLICT RELATIONSHIPS

Question 4.6 In high conflict situations, should the law:

- remain unchanged?
- expressly state that the judge can take into consideration the fact the relationship is very contentious?
- require the judge to take account of the fact that the relationship is high conflict?
- oblige the judge to restrict or control the children's contact with the non-custodial parent and limit his or her parental role when the couple has a high conflict relationship?

From the outset, participants had difficulty linking a high conflict relationship and spousal violence in the broad sense. One participant suggested that the concern was with cases of conflict between parents who have gone beyond the limits and forgotten the best interests of their children. She suggested that in such cases the judge should order compulsory therapeutic mediation for the parents. Another participant suggested that the judge should impose co-parenting seminars. One way or another, **all the participants agreed that a response to these situations must be found through non-judicial means.**

The participants thought that most situations of separation or divorce are fraught with conflict, large or small. It is very difficult for the law to distinguish between small conflicts and large ones, and a legal definition risks causing greater conflict because the definition must be interpreted. As a result, a practitioners must be aware of the implications of long-lasting conflict. In other words, **participants again placed importance on information and education (i.e. the importance of making services available).**

THE PARTICIPATION OF CHILDREN

Question 5.1 Do you think the family law system currently takes sufficient account of children's opinions in decisions about family reorganization that affect them after separation or divorce?

Question 5.2 Have you any suggestions about possible measures or services that would ensure that the children's perspective would be taken into consideration in custody and access decisions, whether with regard to mediation approaches or negotiation between the parents or as a part of the judicial process?

Question 5.3 In what circumstances should children be provided with the services of legal counsel or another representative?

Question 5.4 Do you think children should be able to be represented by a lawyer in custody proceedings and, if that is necessary, under what conditions? What role should the children's legal representative play?

One participant emphasized that the law is currently well formulated, but that its application differs from one judge to another. For example, certain judges refuse to hear children, while others hear them as a matter of course. This lack of uniformity in applying the law causes a problem. In addition, although the children's opinion is one factor judges take into consideration, it varies with the situation, particularly the ages of the children.

Another participant thought that a uniform application of principles is an illusion, because situations are so different. In addition, although it is generally true that children want to express their ideas, the burden of having to do so must not be imposed upon them. On the other hand, it is important that when children are heard, it is done in such a way to protect them. In its written submission, the Chambre des notaires also stressed that while judges and parents need to consider children's opinions, this should not form the basis of decisions made concerning them.

One participant emphasized that the law indeed does provide for children to be heard, but that the process needs to be speeded up, because waiting is very harmful to a child who learns that he or she will have to speak before the court in several weeks or months.

In its written submission, the Barreau du Québec maintained that children's perspectives should be given more weight and that if children are questioned by a judge without anyone present, this testimony should be recorded on tape.

Several participants said that the best place to hear children is in mediation, so children can express themselves before the mediator as well as their parents. In its written submission, the Chambre des notaires suggested that children may be heard by the mediator without the parents present. The Chambre thinks this kind of measure, which should be optional and free, would respond to many parents' wishes.

One participant deplored the lack of a critical approach by representatives of the legal system, including lawyers and judges, when they are dealing with children's opinions.

Another mentioned a study of legal practitioners in the judicial district of Montréal that revealed that very often children are not seen by practitioners: neither the youngest, because they are too young, nor the oldest, because the practitioners do not know what to say to them. **Once again, the absence of training for practitioners was raised.** One participant added that this criticism could be directed at many social service practitioners. In its written submission, the Ordre des psychologues particularly stressed **the importance of informing and educating practitioners on *ways* to let children have their say.**

It emerged clearly from the youth focus groups led by Léger Marketing that many young people feel they should be consulted more by their parents, both when a breakdown occurs and afterwards, and that this would improve the outcome for children during the post-separation and post-divorce reorganization. Young people feel they should be better *informed* about the difficult relationships their parents have, without being *involved* in their conflicts. On the other hand, they are very hesitant about *choosing* the custodial parent themselves because they fear the impact this might have on their relationship with the non-custodial parent. It is interesting to note that young people who were adolescents (14–15 years old) when the breakdown occurred think that children should not be able to choose the custodial parent before the age of 15, perhaps even 18. On the contrary, focus group members who were younger (10-11 years old) when their parents broke up are more open to the idea that a younger child can participate actively in choosing the custodial parent. **The majority of the young people came down in favour of children being able to express their point of view to a neutral third person** (a mediator, for example), stressing, however, that this third party should not come from the legal system (a judge or lawyer) but from the world of human relations (a psychologist, social worker or school psychologist).

WORKSHOP B: MEETING ACCESS RESPONSIBILITIES

Workshop leader	Sylvie Matteau
Secretary	Lucie Ouellet

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Association Lien Pères-Enfants de Québec (Rock Turcotte)
Association masculine irénique et coalition des associations pour la condition paternelle (Claude Lachaîne)
Barreau du Québec (Roger Garneau)
Chambre des notaires du Québec (Doris Laverdière)
Comité des organismes accréditeurs en médiation familiale (Lorraine Filion)
Commission des services juridiques (Alain Poirier)
Confédération des organismes familiaux du Québec (Marc Bachand)
Fédération des associations de familles monoparentales et recomposées du Québec (Danielle Wolfe)
Fédération des femmes du Québec (Thérèse Hurteau Farinas)
Fédération des unions de familles (Louisane Côté)
Quebec Native Women (Danielle Lamirande)
Groupe d'entraide aux pères et de soutien à l'enfant (Pierre Coulombe)
Ordre des psychologues du Québec (Gérald Côté)
Ordre professionnel des travailleurs sociaux du Québec (Claudette Guilmaine)
Regroupement provincial des maisons d'hébergement et de transition pour femmes victimes de violence conjugale (Louise Lareau)

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INTRODUCTION

Problems arise when parents do not comply with the terms and conditions of their written agreement or court order, and deny access or fail to exercise their access rights. The workshop participants dealt with both aspects of the problem. They recognized that they happen for a variety of reasons, particularly a poor understanding of what the agreement or order requires of parents, but also from the ill will of the parents, who do not make a distinction between their parental relationship and their personal relationship.

Access problems range from relatively minor incidents, when access is denied on a particular occasion because the children are sick, to severe quarrels between high conflict parents, even serious accusations of dangerous behaviour with the children or behaviour leading to parental alienation.

On the other hand, the disruption of the child-parent relationship because a parent has failed to exercise his or her access rights also is a major problem for the children as well as the parent who bears sole responsibility for the children.

Participants tried at the beginning of the session to establish the extent and seriousness of the problem—what percentage of cases has these problems? Figures are not available at present. From the outset then, participants criticized the lack of statistics that would make it possible to determine the size of the problem. The group recognized that it would be useful to have these kinds of data.

However, it was also recognized that whatever the number of cases and the frequency of problems, exercising access remains a very difficult ordeal for the parents who must cope with these circumstances. As for the fathers' groups represented in the workshop, 100 percent of the fathers had made serious compromises or had had major difficulties exercising their access rights. According to them, no one is happy. Agencies that offer services to women also witness the significant impact that these difficulties have on mothers and children. An Aboriginal women's representative told the group there is virtually no respect for agreements or judicial orders among Aboriginal people, and local communities have no way of ensuring these judgments are respected.

The participants agreed that it is tomorrow's society that is being affected—the children—and the day's work began on that note.

Another important element emphasized from the beginning was the terminology parents deal with, which makes for bitter relationships. However, the group did not discuss the basics of this question, being confident that the participants in Workshop A would discuss the problem thoroughly.

Question 6.1 Do you think the family law system sufficiently encourages respect for access obligations?

THE CURRENT SITUATION

The participants were unanimous in answering "no" to this question.

Some participants thought that there are too many so-called "hallway agreements," made at the last minute at the courtroom door. These agreements are inappropriate, obtained by force or under pressure because of what the judge may decide in a few minutes, which sometimes may involve embarrassing revelations.

Others thought the frame of reference is the problem, again referring to the terminology and the presumptions underlying the judicial system and the law. According to them, everything should be looked at from the standpoint of the children's right to have equal access to both parents. Others added that the rights and obligations of the parents should also be seen from the perspective of their duty towards their children.

The fact that there is no coordination between the various services and practitioners leaves major gaps in the system. There is no longer anyone who can see solutions. Everyone is overwhelmed, and waiting times are enormous. In addition, parents do not know about the system or the available services. They feel vulnerable, isolated and frustrated, which intensifies conflict.

Participants emphasized the apparently very high suicide rate among Quebec fathers after separation and divorce. These statistics should soon be published. Likewise, the rate of child abandonment by fathers is proof that the system does not encourage respect for access.

Several participants mentioned the growing tendency of some parents to remain outside the system to prevent it from breaking the agreement they have between them or making the situation worse.

It was also emphasized that the system fails grandparents, who are also important and significant for children.

In addition, participants deplored the fact that judges do not use and give force to the section of the *Divorce Act* under which the custodial parent must encourage the other parent's access to the child as a condition of being given custody. The fact that there are too many false accusations and that judges do not follow up on contempt of court was also criticized.

As to having a lawyer represent the children, some participants had positive experiences with this kind of intervention, although several others saw them as a second lawyer for the mother, disturbing the balance of power between the parents. Should the children's lawyer have direct contact with the parents? In what way? How should he or she determine the children's best interests and take instruction from the children, particularly when they are very young?

The participants pointed out that asserting access rights in the judicial system has an enormous monetary cost, beyond the emotional cost.

The Barreau du Québec maintained that family law must be humanized and mentioned the work already done in this regard and its 1997 report *Possible et actuelle, une plus grand humanisation du droit de la famille*.

The participants made the following suggestions.

- The terminology should be modified to permit better parental involvement and provide a different perspective in terms of children's rights and the parents' obligation to their children. On the one hand, children would have the right to see their father as much as their mother. On the other, the custodial parent would have a duty to encourage access, and the non-custodial parent the duty to exercise that right—because a child is waiting.
- It would be appropriate to recognize socially some basic principles, such as the right to be different (i.e. the fact that it is normal for fathers to act differently from mothers, that a father who was not around much when the couple lived together can become a father with a much larger presence after separation and that it is normal for a mother to have doubts about that).
- Emphasis should be placed on education that encourages fathers to look after children right from birth, that distinguishes among the different roles in life and recognizes their worth (i.e. the role of parent, a man and woman contributing to society and the family) and that recognizes that during separation partners have things to settle and parents must necessarily find common ground to protect their children from the effects of the conflict. This again reflects the perspective of the parents' obligation to the children and the children's right to a happy childhood, free from the conflict between parents.
- All practitioners—judges, lawyers, all the people providing legal and paralegal services—have an educational role to play.
- The practice of children's legal representatives should be better supervised and better utilized. Precise rules governing ethics and behaviour should be adopted to assist them in their role and to maintain their neutrality with parents.
- Finally, according to some, mediation is an obligation to children. It should be mandatory.

The participants were unanimously in favour of modifying the system so it could integrate and promote the following:

- **a change in the terminology** and the perspective of the law in terms of children's rights and the duty of parents with regard to their children;
- a stipulation that the judge who hears an access case remains responsible for the file from the beginning to the end of the case;

- **better coordination of resources:** there must be more cooperation between psycho-social interveners and the legal system; participants want a real integration of the social service and legal systems;

- **the ability to identify difficult cases:** action must be taken in advance and then followed up so that parents can quickly obtain the services and assistance they need;

- **the availability of support, right from the beginning, even in difficult cases:** the system must adapt to the needs of each family, providing parents and children with specialized services designed for their particular situation.

- **a provision for direct access to the judge** responsible for the file when access is not respected, through simple notification of the other parent; the judge could thus exercise his or her power of review over the follow-up measures and the parents' attitude; and

- supervision and definition of the role of the children's legal representative.

Question 6.2 Should parents be encouraged to resolve their differences about exercising parental authority and access through mediators, who are impartial, experienced, professional intermediaries, such as mediators? If so, how?

THE CURRENT SITUATION

To give parents a sense of responsibility about resolving their differences, it would be useful to make them aware of the harmful consequences to children caused by contentious relationships and non-respect of agreements and orders.

Everyone agreed that wanting to make parents more aware of their duties and responsibilities towards their children is worthwhile, but the process must begin with practitioners—psychologists, lawyers, social workers—who, according to several participants, do not give parents appropriate information or may even act in ways that create or sustain parental conflicts.

Mediation is underutilized, whether voluntary mediation or ordered by the court under article 815.2.1 of the *Code of Civil Procedure*. Several cases that would have been suitable for mediation were never sent there, because the parents did not have the right information or were badly advised.

Some people perceive mediation as integrated with the legal system. This is false and is detrimental to its development.

There is a critical window of opportunity for taking action, and parents must be informed in time to make good choices.

The participants suggested, therefore, that:

- judges should make sure that parents have seen a video on separation and mediation before the hearing;
- **parents should have easy access to information** on the judicial process, mediation and other possible types of neutral intervention;
- **mediation should be compulsory** (according to some participants);
- there should be more extensive use of **pre-hearing mediation;** and
- **free services** should be offered widely to make them more available in the case of non-compliance with access obligations.

Furthermore, parents in the focus groups led by Léger Marketing suggested that sensitizing parents to their roles and responsibilities and consulting the children were among the solutions to problems with access.

Question 6.3 Do you know about services outside the legal system that encourage respect of custody and access obligations?

THE CURRENT SITUATION

Participants were very familiar with the services available in their region and their field. And they unanimously agreed that there are not enough services, they are not well known in the community and they are often misunderstood by other practitioners. In addition, they are often very expensive and lack adequate financing.

Moreover, participants noted that services are often geared to a particular clientele, men or women. Certain services are victims of prejudice.

In conclusion, participants agreed on the following points.

- It is important, even essential in certain circumstances, to **make neutral places available** for supervised access. Not only should new resources be created but the current network should be consolidated.
- Some participants suggested that these centres should be accredited by a formal authority. Since they affect family members who are living though extreme and often complex situations, children and adults who go to these centres should be assured of finding qualified support personnel with specialized training.
- Although participants did not believe that support groups should be the government's responsibility, because they feared these groups would lose their neutrality, there is **justification for more adequate funding.**

- They also suggested the "**case-management**" approach, a new neutral resource capable of following the situation as it evolves and providing a link between the family and the legal system.
- **Mediation service should be attached to the supervised access centres** so the services are integrated and useful follow-up is carried out to resolve the conflict, and to ensure that use of the access service remains temporary.
- **Emphasis should be placed on services for children.** There must be a specific process for the children, to protect them and to move things forward.
- The stress of divorce sometimes causes a parent to lose control, so **rapid and professional intervention is necessary**. Therapeutic support and psychological and psychiatric services must be provided.

Question 6.4 Do you have any suggestions for better ways to inform people about these services?

As previously discussed, it clearly emerged that practitioners themselves are ill-informed about the nature and availability of these various services.

Therefore, the participants thought it was important, even essential to begin all **information** campaigns with the services network. Only when this is done will all members of the network be in a position to provide accurate and appropriate information to the parents who need it the most.

Some participants suggested that there should be "open house" events for agencies and organizations to publicize their services to the community and to other interveners, including other services, judges and lawyers. All professionals should be informed and visit the services in their region.

At the end of the discussion, however, participants agreed that information alone is not enough to change attitudes and points of view, and it is necessary to go as far as educating new parents about their shared responsibility for their children.

Television information programs should be encouraged to produce documentaries on these subjects. Government should also create advertising campaigns and broadcast them regularly. Flyers should be available throughout the CLSC network, at the court houses and on the Internet.

Question 6.5 Have you any concrete suggestions for establishing mechanisms that would guarantee that access is exercised?

Some participants believed that when a parent violates the other parent's rights, there should be **sanctions**, a monetary payment, for example, for contravening an order or an agreement or in compensation for costs incurred.

However, in terms of coercive measures, which were far from receiving universal approval, **all participants were very hesitant about the contempt of court proceeding**, which is considered inappropriate and even very harmful when, for example, a parent could use this conviction against the other parent to damage that parent's image in the eyes of the children.

For non-custodial parents who have difficulty exercising their rights, it is a crime to see custodial parents abusing their rights with the aim of preventing the other parent from exercising theirs. Children should never be taken hostage, knowingly or unknowingly. There could be a mechanism to ensure that the non-complying parent would receive a notice and then sanctions afterwards.

Another proposal was for a follow-up committee, not subject to judicial control and made up of professionals who would make suggestions to the court about sanctions and remedies (such as loss of sole custody, when the custodial parent fails to ensure that the non-custodial parent has peaceful access). The participants insisted that there must be appropriate measures for appropriate cases.

Other participants firmly opposed coercive measures, seeing the problem more as one of education. They proposed that young people and parents should be educated about parental responsibility, communication, mediation and conflict resolution.

In summary, the participants suggested the following.

- There should be a **family court** made up of judges interested in the human aspects of law and trained in the factors related to family law, and well informed about all the available services and their nature.*

- **At the very least, a judge should remain responsible for a case** until the end and ensure follow up on difficulties the parents encounter in applying their agreement or the court's decision. The judge should have the knowledge and information necessary to refer the parents to other available services in the network, and order that they have recourse to these services, if need be.*

- Parents should have low-cost access to a judge to review the case.

- In cases of non-compliance, there should be a **gradation in intervention**. First, the reasons for non-compliance must be understood and the problem identified in order to respond appropriately to each situation.*

- The motion for contempt of court should be replaced by a motion requiring the parent to come and give reasons why he or she is not complying with the order or agreement.

- Difficult cases should be identified quickly by the court and follow-ups put in place and carried out by neutral, specialized teams.*

- There should be more extensive use of pre-hearing mediation, and no-charge services should be available widely to make them more accessible in cases of access non-compliance.*

- **Mediation should be used with different conciliation models**, so it is available in more difficult cases, when parents cannot immediately be brought together, for example, or when children or other family members may be involved.

- Mediation should also be used for therapeutic or transformative purposes, to improve communication between parents.

- Ensure that the greater the parental conflicts, the more detailed are the specific **plans for exercising access rights** that are laid out in agreements and decisions.

- **Services must be well adapted to the needs of each family**, rather than setting up compulsory, ready-made models, which can only respond to the needs of the majority of people, and rarely to all those who really need them.*

- **Abusing the process** should have real consequences.

- **Children should have a higher priority**, and be assured of services that support them in their difficulties and include them in mediation services and support groups.

- Establish **preventive services**, such as information seminars for parents, so that they become aware of the impact that their conflicts and, more particularly, their problems with access, have on children.*

- There should be **better financing** for parent support services and family support centres to encourage discussions between "delinquent" parents and children, and for setting up co-parenting seminars and producing videos on this subject.

(All suggestions marked with an asterisk were unanimous. Other suggestions were made by some participants, with no opposition expressed.)

Question 6.6 Do you think that parenting after separation seminars are useful? Should certain aspects of these programs be compulsory?

After the discussions described above, **all participants said they were in favour of this kind of seminar.** There should be a minimum amount of mandatory content. For some parents, such a course should be a prerequisite for all proceedings.

Several were familiar with the Service de médiation et d'expertise program at the Montréal Superior Court and spoke in favour of this kind of intervention.

Some participants thought this program could include information on ways of resolving conflicts, including mediation, thus replacing the present group meeting on mediation offered under the pre-hearing mediation legislation.

CONCLUSIONS FROM WORKSHOP B

In sum, participants agreed that an **urgent change of course is needed**. The situation is critical. Society and the legal system must change their point of view on granting and exercising access rights.

Participants want the necessary **resources** to integrate the legal system and social services, to recognize the human aspect of the separation phenomenon within a legal system that was set up to settle legal conflicts, to establish an education program that will be able to promote the values of both parents sharing their duties and responsibilities, and children's rights; and to inform people about the services that are available when parents find themselves in difficult situations.

Participants want the **needs of families** who are experiencing breakdown to be recognized so they can be **given the support and assistance** that parents and children need.

They recommend a **collaborative network** so prevention programs and mediation programs could be set up, as well as case follow up, rapid identification of high conflict cases and tailor-made intervention carried out by neutral and highly qualified professionals.

WORKSHOP C: DETERMINATION OF CHILD SUPPORT PAYMENTS

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Workshop C studied issues linked to the determination of child support payments within the framework of the Quebec model, because the federal model applies only in about one percent of the cases in Quebec. However, some issues, comments and recommendations are also appropriate with respect to the federal model.

Within the scope of renewing the mandate of the committee of the Quebec Ministry of Justice that is reviewing the Quebec model for the determination of child support payments, three topics dominate the research that needs to be continued and expanded: child support obligations of parents with children from subsequent unions, additional costs related to shared custody and child support for children at or over the age of majority.

Theme 1. Child Support Obligations for Children of Subsequent Unions

Question 7.1 Should other support obligations be removed in the model and, more particularly, the Child Support Determination Form from undue hardship and be provided for in some simple and equitable fashion on the Form?

Everyone agreed that the cost of access to justice is high—too high. It would be desirable to find a way to avoid these costs or reduce them. However, within the specific framework of this question, a simple and equitable way to remove the support obligations for children born of subsequent unions from undue hardship is far from clear. Several participants pointed out that they could not speak with authority on a solution, because the association they represented had not taken a position, they were unable to make a choice given the negative effects of either solution or because they wished to give it more thought in light of the discussions.

It seems clear, however, that everyone wants to maintain judicial discretion on this subject.

Everyone also acknowledged that the current system, although costly, is an adequate response to the situation, one that deserves further reflection.

To use a current expression, to "formularize" a solution is desirable. Which one, however, implies a social choice that the representatives present at the workshop were not yet ready to make.

Is the government's question premature? In this case, it would appear that the government is ahead of the social choices that Quebec and Canadian society must make concerning family law and how the family defines itself.

Question 7.2 Should we take into account only those obligations stemming from the previous union when considering other support obligations?

There are two conflicting concepts here. For the supporters of equal rights for children being the priority, all obligations should be considered, both pre-union and post-union.

For the supporters of "relative ability to pay" as a fundamental principle, only former obligations should be considered.

Question 7.3 Should we consider all support obligations or only child support obligations?

It is difficult to claim that a consensus was reached on this. It goes without saying that the principle "children come first" is part of the model and is expressly set out in the federal and provincial legislation.

To take into account support obligations other than those for children presupposes an amendment to the legislation that excludes children in the first place. To take into account these other obligations (spouses and ex-spouses) also implies taking into account their income and opens the door to discussions about this income. This has few or no supporters.

Question 7.4 According to the way these former obligations are taken into account, should the fact that they have already been taxed be considered or not?

Given the complexity of this subject, participants could not take a specific stand on this issue, other than to affirm that taxes should be far removed from any formula developed.

Despite the evident absence of a consensus on solutions to the problem of child support for children of other unions, all the participants agree about the principle of **equality** of children and **equity** in applying the rules used to determine child support. Several times, participants were able to see that the solutions proposed or the principles defended could have contradictory effects on other principles of law or on other objectives of the model. Thus, in applying possible solutions in keeping with the consensus on the equality of children with regard to their respective parents, one is faced with the value of the court orders that have been rendered and that are in effect.

An important distinction was made and must be pointed out. Obligation and support must be distinguished. Since the model indicates that support obligations can be invoked for children of other unions, more than just child support for these children is involved.

This important distinction led several participants to say that all current support obligations should be taken into account as soon as a new child arrives, for whom there is now an obligation. In practice, this means that as soon as a new child born in another union, new calculations must automatically be done to take this obligation into account and, thus, modify the child support for the previous union. This proposal also means that the impact of the arrival of the new child in the other union must be recognized at birth and not just when the union is dissolved.

Other participants said this proposal goes too far. In their opinion, the arrival of new children in another union happens without the children from the first union having anything to say about it. They do not, and cannot, participate in this decision. As a result, they should not have to suffer harm from this, even when the right of each parent to have children with another spouse is neither discussed nor disputed.

All participants agreed that the principle of "ability to pay" implies, without any equivocation, that when this ability exists, the child support should not be changed. Clearly then, it must be determined where the income line must be drawn to grant a reduction in child support or not, whatever principle or method is used.

Theme 2. The Cost of Shared Custody

Question 8.1 Are there additional costs linked to shared custody and when both parents have sole custody and there are more than two children?

Question 8.2 Should the model and, in particular, the formula used to determine child support provide additional amounts for these additional costs?

Question 8.3 Would a percentage of the basic parental contribution be adequate?

All the participants agreed on a certain number of points.

- Yes, there are additional costs for shared custody.
- Everything costs more in shared custody; these costs are related to all the expenses that are part of basic parental support. They are not limited to housing, transportation or clothing.
- Both direct costs and real expenses must be looked at.
- It is important to carry out economic studies on this issue.
- People do not understand and are not familiar with the financial and legal mechanisms of shared custody.
- It is important to make income tax changes to take into account this type of custody.

A review of costs by the participants suggests that all costs linked to basic parental support are higher in shared custody and when both parents have sole custody and there are more than two children.

Since it is desirable for the government to set up mechanisms to take this into account, all costs should be considered. This must not be limited to housing, clothing or transportation, since there are many situations in which other costs arise.

It is not evident that these additional costs for these types of custody are assumed by both parents. Some participants wondered if there should be some way to distribute these costs between both parents or to distinguish between those paid by one parent and those paid by the other.

The solution depends on the principle that is used. In these types of custody, and more particularly in shared custody, the cost of expenses is presumed to be paid by each parent in proportion to their custody time, once child support, which is determined as a function of income distribution, has been paid. Adding further costs to meet the children's needs could be managed in the same way.

It seems, however, that the current mechanism to share or manage expenses in shared custody is not understood. One participant suggested that, for shared custody cases, mediation should be mandatory. Several participants underlined the inherent difficulties in an automatic determination of custody time when calculating the amount of child support, notably because some parents try to arrive at the "magic" 40 percent for financial reasons, rather than for the best interests of the children.

There was consensus about the need for specific steps the government must develop to instruct and inform adequately not only the ordinary citizen, but also all interested parties, from the mediator to the judge, including the lawyers and other players.

Since expense management is badly understood in shared custody, and since there are many solutions (taken mostly case-by-case), some participants suggested that the government propose an expense-management model for these types of custody. Others, motivated by the same arguments, but fiercely opposed to any state intervention in the management of the domestic affairs of the ordinary citizen, suggested that parents be obliged to provide in their agreement an expense-management mechanism that they would use and that the court must accept in order to make the agreement final. When the parents cannot agree, the court should have the responsibility for establishing an expense-management mechanism; a list of subjects to be covered could be proposed by lawmakers.

In response to the suggestion that an appendix to the order should present the details of these additional costs, several participants said that it would not be good to go backwards and produce even more formulas related to the children's needs. The preference is for the application of one basic rule and a fixed calculation.

There seems to be consensus on the addition of a fixed percentage. Participants advocated that economic studies be done to determine the additional costs of these two types of custody and to provide a simple mechanism on the Child Support Determination Form.

This addition could be done based on the average cost per child who is the object of the custody arrangement, and could be added to the basic child support amount. Most participants considered that this percentage should not be lower than 25 percent of the cost per child.

To introduce a percentage, participants advised going ahead with the economic studies necessary to take into account the fact that these costs include all expenses covered by the basic parental support.

This percentage should be introduced in a simple, clear formula on the Child Support Determination Form. Applied by the average cost per child, it seemed to have the agreement of all participants.

Important Additional Specific Comments

The participants were unanimous in saying that there should be perfect harmony between civil and tax laws in the treatment of shared custody. Two specific elements were brought up on which the participants specifically asked the concerned authorities to act.

1. The notion of the dependent child as used in the two income tax laws.

In the case of shared custody, Quebec allows parents to share between both parents, as they wish, all credits available for dependent children. In addition, the fact that one of the parents has support obligations towards the other parent does not stop him or her from having the right to share these credits. When the parents cannot agree on sharing the credits between them, the Quebec Ministry of Revenue will prorate the available credits according to each parent's custody time.[1]

All participants agreed on this approach.

But as far as the federal *Income Tax Act* is concerned, section 118 (4) b) L.I. gives the available credits to only one parent. When the parents cannot agree on who should get the credit, they both lose the credit. Furthermore, the provisions of section 118 (5) L.I. do not permit the parent with a support obligation to have a right to this credit.[2]

The participants expressly requested that the federal authorities align their income tax regulations with the Quebec regulations on this point.

In fact, when the parents have shared custody, they both assume and pay the costs related to these children. So why does the federal government not allow both parents, in accordance with their agreement, to claim the available credits, and, when they do not agree, to go ahead on a pro rata basis in relation to custody time?

2. The CCTB and Quebec Family Allowances

The Quebec Pension Plan assigns appropriate family allowance benefits in accordance with the designation made by the Canada Customs and Revenue Agency with regard to the Canada Child Tax Benefit (CCTB).

In cases of shared custody, both parents take care of the upbringing and education of the children. They are both addressed by the definition of "eligible person" under the terms of section 122.6 L.I., and the children in their shared custody answers to the definition of "eligible dependent person" under this section for both parents.

But, as it was brought to the attention of participants and moderators, in the case of shared custody the authorities automatically consider that each of the parents can claim the CCTB (and, by extension, Quebec Family Allowances) only for the percentage of time his or her custody represents. This is independent of the fact that only one of the parents requests these benefits and allowances.

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[1] Section 752.0.5 and 752.0.6 of the Quebec *Income Tax Act*.

[2] Section 118 (4)b) and 118 (5) of the Canada *Income Tax Act*.

There is no foundation in the law for this administrative policy, and everyone seems to be against it. When the parents agree that only one of them will ask for tax benefits and family allowances, the subsequent request is in complete agreement with the terms of the Act, and this parent can then have sole right to all the benefits and allowances that can be determined with respect to the criteria of income and age.

In such a situation, the tax authorities have no argument for reducing this right in proportion to the custody time. When both parents agree on this distribution, the authorities should be bound by it. And, if both parties request these advantages and cannot agree on the distribution, then, and only then, should the authorities opt for a pro rata scheme, with respect to the custody time of each parent.

The logic behind this position is the same as the logic applied to the questions of credits for dependents. In fact, in the case of shared custody, both parents have to assume expenses for the children under the plan. But if the government has money available for these children, why should it use an unacceptable strategy to reduce its social responsibility?

The participants expressly asked the federal authorities to align their policy on the sharing of child tax benefits with the choices available to parents and their dependent children under the Quebec tax scheme.

THEME 3. SUPPORT FOR CHILDREN OVER THE AGE OF MAJORITY

Question 9.1 Should the Quebec model accord to children at or over the age of majority the same presumptions as those accorded to children covered under the model?

Question 9.2 Should the Quebec model accord to parents of children at or over the age of majority, *who are still their dependents*, the same right of representation that is accorded them under divorce law, when this law no longer applies and when the support for these children is subject to the Quebec Civil Code?

Two positions were laid out in the workshop discussion. Even though everyone agreed that there should be one state of the law, participants approached it from different perspectives.

Thus, everyone recommended that there be one way of proceeding with respect to children at or over the age of majority, with no distinction based on the matrimonial state of their parents.

One group of participants (a minority) considered that, once the children reaches the age of majority, they should be considered adults from every point of view. The impact of this affirmation is as follows.

- Once they have reached the age of majority, support should be paid directly to the children.
- Any request for support (or a change) for older children should be presented by the children to both parents.

- Once the parents' income has been established, the children should benefit from the presumption of the cost of their needs according to the model, as well as the presumption of the parents' ability to pay, as a function of the distribution of their income.

Many objections were raised by other participants. The Ordre des psychologues is especially clear on this point: just because a child has reached the age of majority does not mean that the child is automatically independent and autonomous in all respects. The "children of a separation" must already cope with their parents' situation (even if they are not always direct witnesses to their conflict). They must not now be obliged to sue their parents.

This would also have the effect of forcing the parent with whom the children were living to negotiate rent with his or her children.

Despite the fact that the participants affirmed that majority-age children must not be treated like little kids, but rather be led forward to autonomy, as this is one of the criteria used to determine support payments between the spouses, few participants considered this solution realistic or desirable.

Finally, to apply this solution, the *Divorce Act* must be amended to exclude majority-age children from those considered dependent under the law.

Most participants opted for the opposite consideration. To make the solutions uniform, the Quebec Civil Code should be amended to integrate the notion of dependent child as provided under the *Divorce Act*, when speaking of majority-age children.

In these cases, there was unanimous agreement that the parent with whom the children were living should have the authority to present a request for support, which would be paid to him or her to meet the needs of the children. Also, in all these cases, direct recourse by the majority-age child should have precedence over any recourse by the custodial parent; however, the children should always claim support from both parents to avoid any discord, application difficulties and multiple recourse or appeals.

Everyone unanimously agreed that, in all cases, direct recourse by a majority-age child should have precedence over recourse by the parent who has custody of the children.

Important Additional Specific Comments

Once again, the question of aligning tax policies came up. In fact, if the *Divorce Act* recognizes that majority-age children can be dependents of their parents (or of one of the parents), why then does government economic assistance (CCTB and Quebec Family Allowances) end at the age of 18?

There is no argument to support two different positions by the same government on the same subject. On the one hand, the *Divorce Act* recognizes that these children can be financially dependent on their parents, and on the other hand, the same government says to parents that it can no longer help them once the children are 18.

If a lack of money is the basis for this reasoning, the government should review its budget and apply the same logic and standardize its social and family messages.

Thus, the participants expressly asked the federal and provincial authorities to align their family policies in such a way that the Canada Child Tax Benefit and the Quebec Family Allowances continue to be paid to parents of majority-age children, when these children are dependents of the parents, under the *Divorce Act* and the Civil Code (as amended).

FEDERAL-PROVINCIAL-TERRITORIAL CONSULTATION ON CUSTODY, ACCESS AND CHILD SUPPORT

Hôtel Québec, June 8, 2001

3115 Laurier Blvd.
Sainte-Foy, Quebec   G1W 3Z6
Tel. : (418) 658-5120 - 1-800-567-5276

8: 00	Reception – Miro Hall
8:45	Welcoming address by the conference coordinator – Miro Room
9:15	Workshops – Renoir Room (A), Gauguin Room (B), Van Gogh Room (C)
10:30	Break
10:45	Resumption of workshops
12: 00	Lunch (provided for participants) – Dining room
13: 30	Resumption of workshops
15: 30	Break
15: 45	Plenary session – Miro Room
16:45	Cocktails – Miro Hall

Custody, Access and Child Support

Putting Children's Interests First

Discussion Guide for Quebec

April 2001

Québec

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INTRODUCTION

The federal, provincial and territorial governments have undertaken a vast consultation on questions related to custody, access and child support. These consultations, carried out by the federal, provincial and territorial governments of Canada:

- ☐ are directed toward improving services for parents and children who are experiencing a separation or divorce;
- ☐ provide governments with additional insight regarding the importance of amending the present laws, in particular the *Divorce Act*.

Within the framework of this process, the Federal-Provincial-Territorial Family Law Committee has produced a consultation document and a discussion guide entitled *Putting Children's Interests First: Custody and Access*. These information tools are intended for the general public, and describe the present situation in order to facilitate discussions on possible avenues for change. The information contained therein is of general importance or connected to a particular province, as the case may be.

In Quebec, the discussions that will take place as part of this consultation will be based mainly on this document, which takes the ideas developed at the Canadian level but adapts them to the Quebec reality and the unique aspects of its legal system.

This document presents an overview of the situation and highlights particular problems. It does not claim to treat the numerous difficulties connected with separation and divorce exhaustively, but instead aims to encourage the persons and groups consulted to explore possible solutions. Furthermore, those involved in the consultation will be invited to present a report or make suggestions concerning an element that seems important to them and that the documents do not address.

THE FOLLOWING ARE THE MAIN TOPICS:

— reorganizing parental roles after separation or divorce;

— exercising and complying with access; and

— child support payments.

I. Reorganizing parental roles at the time of separation or divorce

Dominique Goubau

I. Reorganizing parental roles at the time of separation or divorce

1. THE EXERCISE OF PARENTAL AUTHORITY

When parents separate or divorce, they must decide the way in which they will assume their parental roles and responsibilities from that time on. They face a massive number of very concrete questions, such as:

- — With whom will the child live?
- — How will the choice of schools be made?
- — Who will organize the child's vacations?
- — Who will look after health concerns?
- — Who will decide about religious or moral instruction?
- — etc.

Most couples who are separated or in the process of divorce manage to get along and determine by themselves the new conditions of their life as a parent. Others, however, have difficulty agreeing on some questions. In the case of spousal or family violence, mental illness, problems of alcoholism or drug use, it is even more difficult to arrive at a sound agreement.

The laws can assist parents in reaching an agreement by offering solutions and suggesting support agencies, such as consultation or mediation services. When, for any reason, such agreements between parents are not possible, the laws give the courts the powers and tools needed to organize the parental roles in the best interests of the child and in a way that respects their rights.

In practical terms, this means that in Quebec parents who separate or divorce are asked to talk to each other and find a basis for agreement. This can take the form of sole custody with access rights, joint custody, a balancing of parental responsibilities, or the exclusive allocation of certain powers to one parent. The possibilities are endless. But whatever the arrangements might be, the goal of such an agreement should always be to best serve the present and future needs of the children. If an agreement is not reached, it will fall to the court to look after the children's interests. In any case, two big questions necessarily emerge:

- — With whom will the child live?
- — Who will make future decisions concerning the child?

These questions fall under different legislation, federal as well as provincial. One federal law, the *Divorce Act*, applies when parents divorce and when it is appropriate to determine access in particular. On the other hand, it is Quebec legislation that has jurisdiction when non-married parents separate or when married parents separate but do not want a divorce. It is in the Quebec legislation that one finds provisions touching on parent-child relations (parental authority, guardianship, etc.).

Links between federal and Quebec legislations with respect to couples who divorce or separate and who have children are complex and can lead to confusion. Thus, legally married couples with children can be subject to both the *Divorce Act* and the *Civil Code of Quebec* when it is a matter, for example, of their responsibilities related to the upbringing and care of children. For all other couples who separate, as well as for non-married parents who have never lived together, it is the *Civil Code of Quebec* that governs the effects of separation on children. The province of Quebec also has jurisdiction in the matter of the administration of justice. Quebec is responsible for establishing the rules of civil procedure and the administration of legal services in its area. All of this makes the legal context quite complex.

When a court grants custody to one parent, the other parent can generally obtain access. In Quebec, however, that does not mean that the non-custodial parent loses his or her parental authority. The court can, in the interests of the child, modify this authority by according more or fewer powers to each parent. But allocating custody to one parent alone does not deprive the other of authority. On the contrary, Quebec legislation is based on the principle that even after their divorce or separation, the parents continue to exercise their parental authority jointly.

Of course, in daily life custodial parents have the greater authority, since the child spends most of the time with them. Thus, the law and the courts recognize the custodial parent's right to make everyday decisions alone. In principle, it is the custodial parent also who determines the place of residence of the child. However, unless the court orders specific restrictions, non-custodial parents still have an important role, not only through the exercise of their access, but also by their right to participate in important decisions concerning the child. For example, the non-custodial parent always has input when it is a matter of school, health care or the upbringing of the child in general. The two parents also continue to act as legal guardians of the child; this means that they administer the child's property jointly and represent the child in the exercise of his or her civil rights.

In the context of separation or divorce, the combined exercise of parental authority is not always easy in everyday life. On one hand, it implies a minimum of cooperation and communication between the parents, which is not always the case after a separation or divorce. On the other hand, the power of each parent to make decisions concerning the child is not clearly defined by the law. This last difficulty is even more real when it is a matter of divorce cases, since judges do not all give the same significance to the expression "custody" within the framework of the federal law on divorce. In fact, one notes that according to some judges, when a court order grants sole custody of a child to one parent, this parent should also have the right to make principle decisions concerning the child's upbringing. According to this view, non-custodial parents should only have the right of supervision. Their role would be essentially limited to verifying whether the custodial parent is properly doing his or her job. But according to most of the case law, the divorced parents who do not have custody of their children nonetheless have the right to participate in important decisions related to upbringing, health, school, etc. This is also the Quebec civil law solution. As far as the application of the *Divorce Act* is concerned, this divergence in the attitude of the courts creates an uncertainty in Quebec as to the actual effect of an order that grants sole custody to one of the two parents.

Questions:

1.1 Are people who separate or divorce sufficiently informed about the consequences that result from exercising parental authority?

1.2 How can we provide better information on this subject, if it is needed?

1.3 Should parents who separate or divorce be encouraged to stipulate precise arrangements for exercising parental authority in their agreement? Should this be compulsory?

1.4 What services could be offered to encourage this type of agreement between parents?

1.5 When parents cannot agree, should the court stipulate precise parenting arrangements in the court order or should it continue to rely on the general and non-specific principle of "joint exercise of parental authority," the current practice in Quebec civil law?

* * *

2. TERMINOLOGY

In the context of divorce and separation, it is usual to use the expressions "droit de garde" [custody] and "droit de visite et de sortie" [access] or "droit d'accès" [access] that are found in various pieces of legislation. Some people, especially in other provinces of Canada, criticize this vocabulary, considering it to be too aggressive or too emotionally charged. According to this criticism, the words "custody " and "access " indicate that there is a winner parent and a loser parent. The terminology incites parents to do anything to win (that is, gain custody) rather than to attempt to find, in a co-operative spirit, the most advantageous solution for the child.

Questions:

2.1 Do you think using the terms "custody" and "access" is problematic or irritating?

2.2 Should these terms be retained or replaced?

2.3 If necessary, should other expressions such as "sharing parental responsibilities," "usual place of residence," "organizing living arrangements," etc., be used?

* * *

3. REVIEW OF LEGISLATION

As we saw above, the *Civil Code of Quebec* honours the principle of joint exercise of parental authority after the separation of the parents. However, this is not the case with the *Divorce Act*. The law often serves as a reference for spouses at the time of entering into agreements and it is of course the law that the judges apply to resolve disputes when the parents do not reach an agreement. This is the reason why the Federal-Provincial-Territorial Family Law Committee questions whether the *Divorce Act* should or should not be amended in order to construct a better tool for the use of parents and judges when it is a matter of arranging the terms for the exercise of parental authority.

In this respect, the Committee proposes a series of options upon which you are invited to give your opinion, although there may be other solutions that you can put forward. Here are the five options as presented by the Committee.

FIRST OPTION

KEEP THE CURRENT LEGISLATIVE TERMINOLOGY

Keep the present terms *custody* and *access*, but try to develop and implement additional and improved family services, and educational and training services over and above the broad range of provisions for the care of children that already exist in the present legislation. Although the terms *custody* and *access* are used in numerous agreements and orders, their use is not obligatory as long as the responsibilities of each of the parents are clearly stated. These documents can state the access rights for the parent with whom the child does not usually reside or can indicate the dates and times when the child will be with this parent, without using these terms even once. The objective would be to improve in practice the ways in which the parents, lawyers, judges and other specialists approach the parental roles and the resolution of disputes over the children within the framework of family law. In this context, families undergoing a separation or divorce would be provided with the information and assistance they need in order to understand the various types of arrangements they can make to ensure the care of their children, and would be offered the necessary educational and training sessions to reduce as much as possible the conflicts that might exist between them and to protect the children from some of the negative effects of their parents' separation or divorce.

According to this option, we would keep the present terminology of *custody* and *access* so there would be no effect on the present laws that already use or include these terms.

SECOND OPTION

CLARIFY THE CURRENT LEGISLATIVE TERMINOLOGY: DEFINE *CUSTODY* BROADLY

We could continue to use the terms *custody* and *access*, but define them better. An open-ended list would indicate the elements contained in the term *custody*, including the following responsibilities:

- responding to the everyday needs of children, particularly in relation to accommodation, food, clothing, physical needs, personal needs and supervision;
- making everyday decisions concerning children; and
- making important decisions concerning the well-being of children, such as decisions regarding the place of residence, health care, studies and religious instruction.

The law would give parents and judges a framework for dividing the various responsibilities related to the custody of children in *sole custody* or *joint custody* arrangements in a clear and intelligible way. So it would not be necessary to indicate whether the parental arrangement was *sole* or *joint* custody. The parental arrangements or court orders could use the expression *custody* but they would not need to do so as long as the responsibilities of each parent were clearly stated. They could refer to access times for the parent with whom the children are not usually residing or simply indicate on which dates and at which times the children will be entrusted to this parent, without ever finding it necessary to use the term *access*.

THIRD OPTION

CLARIFY THE CURRENT LEGISLATIVE TERMINOLOGY: DEFINE *CUSTODY* NARROWLY AND INTRODUCE THE NEW TERM AND CONCEPT OF *PARENTAL RESPONSIBILITY*

Keep the terms *custody* and *access*, but give the concept of custody a narrower meaning. Introduce the term *parental responsibility*, which would refer to all of the rights and responsibilities of parents with respect to their children, including:

- the responsibility for meeting the everyday needs of children (residence, food, clothing, physical needs and supervision);
- the responsibility for making everyday decisions concerning children; and
- the responsibility for making important decisions concerning the well-being of children, such as those relating to the place of residence, health, education and religious instruction.

Custody would be a component of parental responsibility, that is, the responsibility for maintaining a residence for the children.

Custody, then, would refer to the responsibility for determining the place of residence of children, but not the way in which important decisions concerning them are made. Each parent should be responsible for everyday care and decisions when the children are with that parent. In the agreements and orders, we could clarify the procedures for exercising other parental responsibilities. The parents would also be called upon to exercise solely or jointly various parental responsibilities, according to what is in the best interests of the children in their particular situation.

FOURTH OPTION

REPLACE THE CURRENT LEGISLATIVE TERMINOLOGY: INTRODUCE THE NEW TERM AND CONCEPT OF *PARENTAL RESPONSIBILITY*

Replace the terms *custody* and *access* in family law by a term covering a new concept, *parental responsibility*. The specific elements of this new concept could be defined in the legislation. In place of custody and access orders, courts would be called upon to issue orders regarding parental responsibilities in which they would prescribe precise terms for exercising parental responsibilities. The law would not require that the exercise of parental responsibilities be allocated equally or that they be exercised cooperatively. Certain responsibilities could be exercised by one or the other of the parents or by both jointly, in accordance with the best interests of the child. If it became necessary to protect the best interests of the child, one of the parents could be entrusted with the power to exercise exclusively almost all of the parental responsibilities.

FIFTH OPTION

REPLACE THE CURRENT LEGISLATIVE TERMINOLOGY: ADOPT THE TERM "SHARED PARENTING"

Introduce the principle of "shared parenting" into family law. The recommendation in the report of the Special Joint Committee on Custody and Access, *For the Love of Children*, stated in particular that the sharing of parental responsibilities should be interpreted as "also encompassing all of the meanings, rights, obligations and interpretations" which were previously expressed by the terms *custody* and *access*. This approach did not imply that the children had to live for equal periods of time with each parent. Nonetheless, it was based on the principle that it would be beneficial for children to have an extensive and regular interaction with both parents, and that there should therefore be an equal or almost equal sharing of the rights and responsibilities of the parents, including the power to make decisions. Parents who do not want this should provide proof that the sharing of parental responsibilities is contrary to the best interest of the child.

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In addition to these five options, we could add that option provided by Quebec civil law, according to which the allocation of custody to only one parent still leaves the principle of joint parental authority intact. As we have explained above, this means that without an agreement and detailed instructions from the court, the non-custodial parent can continue to exercise his or her parental authority and, in particular, to participate actively in important decisions regarding the education and care of the child.

Note that the third option proposed by the Federal-Provincial-Territorial Family Law Committee in fact represents the solution of Quebec civil law, apart from the difference that the expression "parental authority" happens to be replaced by the expression "parental responsibility."

Questions:

3.1 Which option would you choose from among those described above?

3.2 Do you have any other proposal to make on this subject?

4. THE CONCEPT OF THE BEST INTERESTS OF THE CHILD

Both federal and Quebec legislation attach great importance to the concept of "the best interests of the child." It is now well accepted that all decisions concerning children must be made their best interests, whether the decision-maker be a judge, parent, teacher, educator, physician, etc. This principle, which is accepted, moreover, by the *United Nations Convention on the Rights of the Child,* applies equally to agreements made by parents at the time of their separation or divorce. The arrangements that they make regarding children must serve the interests of the latter.

However, contrary to some legislation in other provinces, neither the *Divorce Act*, nor the *Civil Code of Quebec* stipulate what the term "interests of the child" actually means. The *Divorce Act* only says that the interests of the child must be "defined in terms of his or her resources, needs and, generally speaking, situation." For its part, the *Civil Code of Quebec* defines the concept by emphasizing that it is necessary to take into consideration "besides the moral, intellectual, emotional and physical needs of the child, his or her age, health, character, home environment and other aspects of his or her situation."

When, at the time of a divorce or separation, it has to be decided where the child will live and how custody (sole or joint custody) or access (every other weekend, a part of vacation time, etc.) will be structured, the criterion of the best interests of the child must still take precedence. In other words, the legislation does not favour one way over another. Only the interests of the child will dictate the best solution in each particular case.

Some people think nonetheless that the law should be more explicit and that it should list the criteria to consider in determining the best interests of children. According to them, a list of factors could sensitize people to different aspects that they must consider when making decisions regarding children. One can consider, among other things, the cultural environment, ethnic origin, religious beliefs, the child's ability to adapt, relationships with brothers and sisters or with other family members like grandparents, etc.

Opinions vary on this issue. Some consider that establishing a list would not increase the predictability of decisions and would not reduce disputes. Others believe that it could be useful to add some key factors, but that if these are too numerous, it could prove to be difficult, or even useless, to apply.

However, in connection with deciding custody and access, the *Divorce Act* provides an additional explanation by laying down that in principle the child must have the most contact with each parent that is compatible with the child's interests. This act even provides that the court, which must make a decision regarding custody, has to take into consideration whether or not the parent who claims custody is disposed to facilitate contact between the child and the other parent. This is what some call the principles of "maximum contact" and "friendly parent."

These two principles raise a controversy. Some think that they are unjust and create dangerous situations, particularly in cases of spousal violence or especially high conflict relations between the parents.

The *Divorce Act* clearly provides that the court must consider the behaviour of the parent when it affects the ability of this parent to act as father or mother. Consequently, the courts can consider the existence of a violent family environment in their decisions regarding the allocation of custody. And they do this regularly in their judgments. But the law does not make it a specific factor in the decision. It is the same in cases where, although there is no violence, the relations between parents nonetheless have very high levels of conflict.

Questions:

4.1 Should the notion of children's best interests be more clearly stated in the legislation?

4.2 If this is necessary, which aspects of children's interests should be specified in a legal definition?

4.3 Must the "maximum contact" and "friendly parent" principles remain unchanged in the law?

4.4 Should the "maximum contact" and "friendly parent" principles be just two factors among many, thus enabling the courts to balance these principles with other important criteria related to children's interests?

4.5 Regarding spousal and/or family violence as criteria to consider in determining custody or access, should the law:

remain unchanged?

include a general statement recognizing that children who witness violence between their parents are affected by it and that family violence is a serious threat to the safety of parents and children?

state expressly that judges can take spousal or family violence into account when making decisions?

require that judges consider spousal or family violence when rendering their decisions?

oblige the judge to restrict and/or control the contacts children have with the violent parent and limit the parental role of this parent?

eliminate the idea that "the court must take into account the willingness of each parent to facilitate communication with the other parent"?

4.6 In high conflict situations, should the law:

remain unchanged?

expressly state that the judge can take into consideration the fact that the relationship is very contentious?

require that the judge take account of the fact that the relationship is high conflict?

oblige the judge to restrict or control the children's contact with the non-custodial parent and limit his or her parental role when the couple has a high conflict relations?

⁂

5. THE CHILD'S PERSPECTIVE

Decisions made by parents or judges in the context of separation or divorce directly affect the children. In their interest, it is therefore desirable that the children's perspective be taken into account. Considering their opinion does not mean letting children themselves decide. However, it is important to examine the conditions under which children's opinions are taken into consideration.

Parents face a dilemma when they try to reach an agreement: to what extent should they take their children's ideas into consideration? But the judge also asks the same question when the time comes to consider the appropriateness of listening to the child as part of the legal proceedings. In some special cases one can in fact find it necessary to have the child heard by the court.

In accordance with the *United Nations Convention on the Rights of the Child*, the *Civil Code of Quebec* prescribes that "the court shall, in every application brought before it affecting the interest of a child, give the child an opportunity to be heard if his age and power of discernment permit it." Depending on their age and development, therefore, children could present their point of view before the court.

Moreover, Quebec legislation also provides a certain number of mechanisms providing a framework for the child being heard by the court. Thus, children can be accompanied by someone capable of assisting and reassuring them. In some cases, the child could be represented by a lawyer, whether this be at the request of the judge, a parent, or even at the request of the child himself or herself. In other cases, the point of view of the child can be explained by means of a psychosocial evaluation or through the process of mediation.

Questions:

5.1 Do you think the family law system currently takes sufficient account of children's opinions in decisions about family reorganization that affect them after separation or divorce?

5.2 Have you any suggestions about possible measures or services that would ensure that the children's perspective would be taken into consideration in custody and access decisions, whether with regard to mediation approaches, or negotiation between the parents or as a part of the judicial process?

5.3 In what circumstances should children be provided with the services of legal counsel or another representative?

5.4 Do you think children should be able to be represented by a lawyer in custody proceedings and, if that is necessary, under what conditions? What role should the children's legal representative play?

II. Exercising and complying with access

Sylvie Matteau

II. Exercising and complying with access

Both parents must comply with the conditions of the written agreement or the custody and access order. Problems arise when parents fail to comply, particularly when they refuse access or do not exercise their access. This can occur for various reasons, especially because of a poor understanding of what the agreement or order requires of the parents. Difficulties related to access can result from relatively minor incidents, when access is refused on a specific occasion (for example, in the event of sickness of the child), or from serious quarrels when parental relations are highly contentious. The fact that the parent-child connection is disturbed because of the failure of a parent to assume his or her access represents a serious problem.

Parental separation necessarily causes a reorganization of parental responsibilities (see Part I. Reorganizing Parental Roles at the Time of Separation or Divorce), even if in civil law it does not imply the loss of parental authority for the non-custodial parent. As for the *Divorce Act*, it states that unless there is a contrary order, a spouse who is granted access has the right to make inquiries, and to be given information as to the health, education and well-being of the child.

The custodial parent is therefore the one who makes the decisions that affect the everyday life of the child, such as housing, food, daily discipline, clothing and activities. Nonetheless, since these decisions have a serious impact on the well-being and education of the child, the non-custodial parent has a recognized right of supervision over these activities. Therefore, this parent can at all times obtain information related to the child, among others from the school (this information can only be refused by a specific prohibition order), and thus maintain, by the recognized power of supervision, a definite influence on the daily actions of the custodial parent. In cases of joint or shared custody, the parents exercise these responsibilities in turn when the child is under his or her roof.

Finally, another important legal concept should be remembered, that of the best interests of the child. One Superior Court decision defines this as follows:

> *"One can say that the best interests of the human being is none other that the measure of his or her worth. Now the worth of a person generally includes four aspects: the physical or material, the affective or emotional, the intellectual or educational, and finally, the moral and religious or spiritual. The culmination of all of these aspects gives a being what one can call his or her particular culture."*

It goes on to attempt to determine an order of priorities for these components:

> *"At the level of values, it is a constant that the physical aspect is subordinated to the emotional, the emotional to the intellectual, and the intellectual to the moral and to the spiritual. But at the level of the concrete and everyday realization of these objectives, the physical aspect necessarily has priority over the emotional, the emotional over the intellectual, and the intellectual over the moral and spiritual. This is particularly true for the child of a tender age."*

The problem is therefore to determine how it would be possible to promote the observation of obligations related to access in a way that would best serve children's interests.

In order to do this, we present an overview of the services and resources presently available to parents who are experiencing this kind of difficulty.

6. MECHANISMS AIMED AT ENSURING ACCESS COMPLIANCE

Whatever their various approaches, the provinces and territories provide a number of mechanisms aimed at ensuring the effectiveness of access. Some are stipulated in the legal process; others correspond rather to services available for persons under the court's jurisdiction.

MECHANISMS PROVIDED BY THE LEGAL SYSTEM

Among the elements which are part of the legal process, one finds contempt of court, the request for an amendment of a custody order, psychosocial evaluation, examining the child before the court and the child's representation by a lawyer, as well as financial measures.

CONTEMPT OF COURT

Whoever is found in contempt of court, that is to say, one who contravenes a court order, is liable for a fine not to exceed $5,000 or imprisonment for a period of up to one year. This judgment is rendered on proof of the allegations.

This procedure belongs to the criminal field and is not appropriate for family needs. Moreover, judges only exceptionally resort to penalties of imprisonment because they are often contrary to the best interests of children.

Contempt is a procedure very seldom used, therefore, since the court does not have the latitude to correct the situation. It only decides on a possible fine or on potential imprisonment as a punitive measure.

AMENDING THE CUSTODY ORDER

The other option at the disposal of the parent who encounters difficulties in connection with custody or the exercise of those rights is to apply to amend them. The lack of cooperation of the other parent, or his or her negligence in the exercise of access, and the best interests of the child to have a stable relationship with both parents or to develop in an environment without destructive disputes are then alleged. During such proceedings, it is usual to request a psychosocial evaluation.

THE ORDER FOR PSYCHOSOCIAL EVALUATION

The court can, with the consent of the parties, request an expert opinion in order to try to understand the nature of the problem. This expert evaluation service, which is attached to the Superior Court, acts in an impartial manner with respect to the two parents. It is a matter of a tool permitting the court to identify the best possible solution in the circumstances; its sole goal is to determine what is best for the child concerned.

EXAMINING THE CHILD

The court can also examine the child, even without the presence of the parties, as long as they have been informed. In this case, the child may be accompanied by a person capable of assisting and reassuring him or her. However, this practice is not widely used. The age of the child, his or her apparent maturity and ability to express himself or herself are factors that the court will take into consideration. Although, the court does not place the decision in the hands of the child (and it is important that children understand clearly that this responsibility has not been placed on them), a conversation with the child can help to enlighten the court in its deliberations.

COUNSEL FOR THE CHILD

In more delicate situations, it is possible to have a legal representative named for the child. When the court establishes during the proceeding that the child's interests are at stake and that to ensure their protection it is necessary that a different lawyer from that of the parents be appointed, it orders an adjournment of the hearing until the child be thus represented.

In all of their deliberations concerning custody or access, the principle of the best interests of the child is the determining factor for judges. It is generally agreed that deciding on questions related to custody and pronouncing on a financial or material matter are two very different things.

OTHER INCENTIVE MECHANISMS OR PENALTIES

In the same way, the obligation to provide support is not tied to access or the exercise of this right, for it is considered that such an association would generally be contrary to the best interests of children. Nonetheless, some provinces have adopted a mechanism for monetary compensation in cases where access is regularly and repeatedly ignored or disregarded. This system does not exist as such in Quebec. However, the courts have already accepted the idea that the non-exercise of access can have some effect on the amount of the support payment when it causes the custodial parent "undue hardship" within the meaning of the regulations for determining child support payments.

Finally, it must be emphasized that according to widely held opinion, it seems that it is not usually in the interests of the child to force reluctant parents to visit their children.

Moreover, there are a variety of other ways to deal with problems relating to access. These extrajudicial methods include mediation, supervised visits, and programs on parenting after the breakup.

EXTRAJUDICIAL MECHANISMS

Mediation

In Quebec it is possible for parents who want to designate or amend access, and who want to resolve the difficulties that they are experiencing in this regard, to take advantage of certain free services offered by an accredited mediator.

Under Quebec law, the court can even, for a given period of time, suspend the hearing and issue a mediation order. This is the only circumstance where the parties are required to go to mediation. In other cases, the lawmakers have made only the first stage of mediation obligatory, that is, the information and evaluation session.

Mediation is a technique by which an impartial third party assists spouses to discuss and negotiate an equitable agreement dealing with the consequences of their separation and, more specifically, the sharing of their parental responsibilities. The mediator does not act as a judge of the situation or the options suggested by the spouses. They alone are in control of the content of the discussion; the mediator is only in charge of the process.

The intervention of a mediator has supported numerous Quebec parents for more than twenty years. This method has the advantage of introducing a minimum amount of communication concerning the children. Mediators permit the parties to distinguish between their spousal relationship, which is ending, and their role as parents, which endures.

During mediation, parties can discuss the methods and criteria that will govern future decisions concerning their children, which is beneficial for giving concrete expression to the concept of the exercise of parental authority. Mediation offers parents a neutral forum in which to reflect on the difficult problem of the sharing of their authority to make decisions and to supervise their children, who are now living under two roofs. It provides a place for discussion, establishing detailed arrangements, the exercise of parental authority and access.

The goal of this approach is to give the parents a sense of responsibility for decisionmaking. This approach has several important influences on the agreement reached by the parties. First, and above of all, studies have demonstrated that even more than the separation of the parents, it is the way in which they separate that can gravely affect the child. The degree of conflict that children witness and its repercussions are the most important factors in their adaptation and acceptance of their new family situation. Mediation avoids putting the parties in an adversarial position. It is based on a model of cooperation that has a certain impact on the level of confrontation that the parents and, consequently, the children will experience.

Secondly, the agreement will suit the particular circumstances of the family better. It is generally more detailed than a court order and often takes into consideration some future possibilities, which the court cannot do. For example, what will happen when the boy at seventeen years old wants to live with his father, who lives a few minutes away from the C.E.G.E.P.?

Thirdly, the agreement worked out by the parties with the assistance of an impartial third party provides less chance of misunderstanding the terms used and the intention behind the words, since it is the parties themselves who have chosen and expressed them in a final written text. There are therefore fewer possibilities for disagreement during the implementation.

Fourthly, and perhaps even most important, it seems that the agreements arrived at through the intervention of mediation are better complied with than court orders. Of course, a majority of these agreements have been entered into by parents having a minimum of communication and who are agreeing (at least in general) on measures related to their children. Even so, statistics and longitudinal studies have a tendency to show that compliance is nearly as great in high-conflict relationships. Researchers explain this phenomenon by the fact that the parties themselves are deciding on the terms of custody and access during the process of mediation, and that they respect their own decisions or their own compromises more than if the solution is imposed on them by a third party, as in the case of a judge.

On the other hand, there are doubts that this mechanism is appropriate in situations of family or spousal violence or in extremely high-conflict cases, for mediation requires a certain degree of good faith and willingness on the part of the parties.

Supervised visits

When access is problematic because of a violent situation and the safety of the spouse or the child is at stake, or because access has been interrupted or there is too much conflict, supervised visits can constitute a valid way of permitting the children to maintain contact with the other parent.

It is sometimes simply a matter of an exchange point ensuring a neutral ground for the transfer of the child from one parent to the other. The daycare or a family member (grandparents, a brother or sister) can be an important resource, but a totally neutral place is often required. The parents can be called upon to contribute financially to this kind of service.

Indeed, these services are provided by community or non-profit organizations, which are often not financially secure.

Programs on parenting after a breakup

Seminars on parenting after a breakup (two two-hour seminars) are presently offered free to clients of the Service d'expertise psychosociale [psychological and psychosocial evaluation service] and of the Service de médiation familiale [family mediation service] at the Montreal court house. Most of the other Canadian provinces also have some variation of this type of program.

Parents learn how to better understand their children's reactions to their separation as well as their own adult reactions. Just like mediation, this program attempts to assist parents in making the distinction between their role as parent and their relationship with their spouse. It provides information as well as suggests ways of communicating better and organizing new family relationships. It gives parents the message that their children need to get across to them. Finally, it informs parents about the different resources and support services that are available to them.

Questions:

6.1 *Do you think the family law system sufficiently encourages respect for access obligations?*

6.2 *Should parents be encouraged to resolve their differences about exercising parental authority and access through mediators, who are impartial, experienced, professional intermediaries, such as mediators? If so, how?*

6.3 *Do you know about services outside the legal system that encourage respect of custody and access obligations?*

6.4 *Do you have any suggestions for better ways to inform people about these services?*

6.5 *Have you any concrete suggestions for establishing mechanisms that would guarantee that access is exercised?*

6.6 *Do you think that parenting after separation seminars are useful? Should certain aspects of these programs be compulsory?*

III. Determining child support payments

Jean-Marie Fortin

III. Determining child support payments

Rules for determining child support payments have been in force since May 1, 1997. On the same date, tax exemption measures came into effect, by which support payments for children are no longer deductible from the taxable income of the parent paying support and are no longer included in the taxable income of the parent receiving the payment.

The Report of the Follow-up Committee on the Quebec Model for Determining Child Support Payments was tabled in the National Assembly on May 3, 2000. It gives a progress report on the three years that the new rules have been in application. The report makes a certain number of recommendations directed at improving the system and it raises serious questions, some of which are taken up in the following text.

Before beginning to discuss the various topics, it is important to recall the salient points of the Quebec system for determining child support payments, which applies to all cases in Quebec where the amount of a support payment must be determined, except in divorce situations where the spouses or former spouses reside outside the province. (In this context, but only in this context, there are federal guidelines that must be applied.)

BASIC PRINCIPLES OF THE MODEL

The following constitute the basis for the Quebec model for determining child support payments:

- To affirm the common responsibility of parents regarding their children;
- To ensure that children have their needs covered on the basis of their parents' ability to pay (payments are determined according to the needs of the child and the incomes of the parents);
- To share between the two parents (and not the non-custodial parent only) the responsibility for financial support of the children in proportion to their respective incomes;
- To consider as a priority the parent's support obligations relative to expenses that are in excess of basic essential needs;
- To support the equal treatment of all of the children born of different unions in relation to their right to support as much as possible; and
- To maintain as much as possible incentives for low-income parents to fulfill their support obligations to their children.

The calculation of support payments is essentially based on the following data:

- the income of both parents;
- the number of children;
- the periods of custody; and
- if applicable, certain costs related to the needs of the children.

The model was designed in order to ensure that the needs of children are covered and that the support payments determined are sufficient and predictable, all while taking into consideration the incomes of both parents. It attempts to make the determination of child support payments easier, quicker and less costly.

These results can be obtained through the various rules stated in the legislation and regulation, which are supplemented by the form and the table, tools that are practical and user-friendly.

These precise standards make it possible to establish, from the disposable income of the two parents and the number of children, the basic support contribution from the parent that is presumed to correspond to the needs of the children and the capabilities of the parents. Proof of need is therefore no longer required for the purpose of covering basic needs.

This contribution can be increased in order to take into account certain child-related costs, such as custody costs, post-secondary studies and special expenses. These costs must be agreed upon or proven. They can be added if they are in accordance with the definition in the regulation and to the extent that they are reasonable with respect to the needs and capabilities of each person.

It was hoped that the introduction of these rules would reduce confrontations between parents, as well as the delays and costs involved in determining child support payments. The model provides all the tools needed for parents to calculate the support payment to be paid themselves.

The model is flexible enough to assist parents to agree on a different amount from that calculated according to the rules. However, they will have to clearly state the reasons for this difference in their agreement and the court will have to ensure that the agreed-upon amount provides sufficiently for the child's needs. If there is no agreement between the parties, it is necessary to prove that the determined support payments would cause undue hardship for one or the other of the parents in order to set aside the model. Also, the court can increase or reduce the support payments, taking into account the value of a parent's assets or the resources of the child.

COMMITTEE RECOMMENDATIONS

The Follow-up Committee made numerous recommendations, some of which encouraged the government to pursue the reports and consultations on some of the more controversial issues. Within the framework of the present consultation, three of these are noted: support obligations resulting from other unions (recommendation 26), the cost of joint custody (recommendation 34) and support for a child of full age (recommendation 41). The following text presents the commentaries of the Follow-up Committee for each of these issues, with specific questions added.

7. SUPPORT OBLIGATIONS RESULTING FROM OTHER UNIONS (RECOMMENDATION 26)

That the ministère de la Justice pursue the Committee's investigation of the various solutions regarding support obligations arising from other unions.

On average, the number of children covered by the application for support is 1.65, with the majority of cases involving one child (49%) or two children (38%). (Please see Section 3.2.6 in Chapter 4.)

We have no clear data concerning the number of cases involving children from other unions. The only data we do have in this regard can be found in Section 3.2.7 (explained and unexplained agreements) and Section 3.3 (undue hardship) of Chapter 4. These data are incomplete, making it impossible for us to be more precise about the issue.

In their responses to the survey, several lawyers and a certain number of mediators have pointed out that the model should take children from another union into account in the calculation of child support payments. Moreover, with respect to the principle that the model should, as far as possible, ensure equal treatment for all children from various unions regarding their right to support, it would appear that fewer than 50% of the responding lawyers consider that this objective has been reached, whereas over 75% of the mediators and special clerks of the court do believe that the principle has in fact been respected.

In addition, the committee is in agreement with trends in the case law indicating that children from other unions are not meant to be covered by the support application since the table is based on children from the same union. Hence it follows that Line 400 is meant to include only the children of the two parents covered by the form.

The committee is also of the opinion that the obligation of support arising from earlier unions is not covered by the calculation procedure established in the Child Support Determination Form; rather, as the case law confirms, it is included under the notion of undue hardship that can be argued under article 587.2, para. 2, of the *Civil Code of Quebec*.

On the other hand, the number of contributions and letters that the committee received on this issue proves that it deserves special attention: should the model, and especially the Child Support Determination Form, in a simple and fair manner, take into account other obligations of support?

To ask this question is, in fact, to raise doubts about one of the basic principles of the model, namely that of ensuring, as far as possible, equal treatment for all children from various unions with respect to their right to support.

The following economic argument seems irrefutable: from the beginning of the relationship, the disposable income available to a second union is always reduced by the support paid to the first spouse. Hence, how can it be claimed that each union must benefit from the same disposable income? Doesn't it only stand to reason that calculations of disposable income at the time of the second union's breakup should automatically take into account any previous obligation(s) of support since the sums paid for support have never actually been available to members of the second union?

One of the reasons why it has been difficult to adopt simple remedial measures in this regard lies in the fact that earlier support payments may or may not have been deductible, or even that some have been and others have not, depending upon the case at hand. Disposable income is, for all intents and purposes, gross income and thus is subject to taxation, and the table does in fact take tax consequences into account in determining the basic parental contribution.

For some practitioners, the notion of disposable income used in the Child Support Determination Form (Line 306) does not entirely reflect a certain economic reality; for them, true "disposable income" should be net after-tax income, i.e. excluding social security and income tax deductions, as well as—in the present discussion—earlier obligations of support.

Before examining this argument more thoroughly, it is important to keep in mind a few of the basic notions found in the model. We have already addressed the concept of income and the way it is handled in the table, where the table provides a list of gross incomes that only take expenditures for goods and services into account. It should also be recalled that even though the disposable income appearing at Line 306 represents, for all intents and purposes, gross income (at least from an income tax standpoint), the sum has already been reduced by a basic total deduction of up to $18,000, not to mention deductions for union and professional dues, if applicable. Hence this sum does accurately reflect, for purposes of the model, the parents' disposable income

The committee carried out certain simulations as a means of clarifying its views concerning other obligations of support.

One very simple solution would be to add a line to Part 3, between lines 303 and 304, where the user could record earlier obligations of support. Accordingly, the figure appearing at Line 304 would include these obligations of support, and a lower disposable income would thus be used in calculating the basic parental contribution to be provided by the second union.

This seems like a simple solution, but certain problems do nonetheless arise.

First of all, questions might be raised concerning the fact that certain earlier obligations are deductible (usually those pertaining to former spouses), while others are not (usually child support payments), and that the two types of obligations may also be assumed simultaneously (child support payments and support for a former spouse, or obligations of support still subject to tax treatment).

In cases such as these, should a distinction in fact be made between the two? If so, should the non-deductible support contribution now become subject to tax treatment, in keeping with Part 3 (that deals with before-tax amounts), or should deductible obligations of support be made non-taxable, on an equal footing with sums appearing in the table that are determined using non-taxable amounts? The first solution seems to be the logical one. It does, however, include calculations that can perhaps only be carried out by those having access to special software. Also, it goes against the current principle according to which child support payments should be removed from the tax system.

The second problem may be stated as follows: Should all obligations of support arising from other unions be taken into account, or only those pertaining to child support?

In this regard, it is the view of the committee that all earlier obligations of support must be considered, not just child support obligations. In fact, given that calculations of parental income must include "support paid by a third party and received for one's own needs" (Line 204), on the basis of what principle could support paid to a third party and received for personal needs in fact be excluded?

Another consideration should be added here. If a parent is required, when calculating obligations of support toward children from a second union, to include in his or her income at Line 204 support received for personal needs from a support payer from an earlier union, what reason could there possibly be to deny the payer the possibility of deducting both child and spousal support payments?

In order to promote the objective of equal treatment of children, the courts have ruled that children from all unions should be treated the same way, determining at the same time that the same income of the parent common to both (or several) unions should be used for purposes of calculating support.

The following question must be addressed: Why did the lawmakers include Line 204 when indicating how to calculate parental income? As things currently stand, the parent covered by Line 204 is no longer on an equal economic footing. This parent's income, for purposes of determining his or her obligation of support toward children from the first union, does not include any personal spousal support received, whereas when calculating the income of the second union, the latter support payments must be taken into account. Some would argue that if such support is awarded to cover personal needs, it should not be included when calculating the needs of children from the second union.

The committee considers that by including Line 204 in the Child Support Determination Form, the lawmakers basically established an order of priorities pertaining to various unions over time.

This line may also have been included to reflect the description of income found in what was once Form II of the Quebec Superior Court (now Form III), which was used to determine the support needs of both parties, the spouse and the children, and which is still used to establish the spouse's needs only.

The fundamental notion of personal responsibility includes accepting responsibility for the consequences of one's actions, and these consequences do not, as it were, disappear over time. Thus, the very act of choosing a spouse has definite consequences which, if the relationship should collapse, lead to certain obligations. The same holds true when a couple chooses to have children: obligations remain in the wake of any breakup.

In time, these obligations will be set down in an agreement or a support order. If one of the parties subsequently chooses to form a new union, he or she must continue to assume the consequences of the earlier breakup. Hence, the latter will enter into any new relationship with a disposable income lessened by this obligation of support.

The new responsibilities entailed by a second union may only be taken on while respecting, and within the limits imposed by, the obligations arising from the first. The new partners, and any children they may have, will have to depend on a disposable income reduced accordingly.

Over the course of its mandate, the follow-up committee debated whether it would be appropriate to add new rules to the model so that parents might deduct amounts or a percentage of amounts paid in order to fulfil other obligations of support besides those covered by the application in question.

This may be the opportune moment to try to discern the scope the lawmakers intended to give one particular objective of the model, namely that of providing, as far as possible, equal treatment for all children from various unions with respect to their right to support.

Does respecting the latter principle mean that the monetary value of each support obligation must be equal? It may be argued that whereas everyone has the same right to apply for support, the level of support actually awarded may nevertheless depend upon the parents' ability to pay and their obligations with respect to other unions.

The committee has therefore studied the possibility of introducing specific rules and thus limiting the discretionary power of the court, as it is currently outlined in article 587.2 of the *Civil Code of Quebec* with reference to undue hardship. Committee members believe that it is important, in order to guarantee the ongoing fairness of the model, to ensure that all the children's needs are met, while considering possible difficulties the support payer may face in fulfilling all of his or her obligations.

A review of the case law reveals a certain trend whereby judges, in the current legal context, are reluctant to give more importance to one union over another. Thus a number of judges refuse to establish a scale of priorities as it concerns various unions and the children from these unions.

It may nevertheless be advisable to leave a certain discretionary power in the hands of the court, other than that based on the notion of undue hardship, in order to allow judges to reduce support contributions in light of support obligations linked to other unions. In any case, studies looking at various solutions to the problem raised by such support obligations should definitely be pursued.

[Excerpt from the "Rapport du Comité de suivi du modèle québécois de fixation des pensions alimentaires pour enfants"]

Questions:

7.1 Should other support obligations be removed in the model and, more particularly, the Child Support Determination Form from undue hardship and be provided for in some simple and equitable fashion on the Form?

7.2 Should we take into account only those obligations stemming from the previous union when considering other support obligations?

7.3 Should we consider all support obligations or only child support obligations?

7.4 According to the way these former obligations are taken into account, should the fact that they have already been taxed be considered or not?

8. THE COST OF JOINT CUSTODY (RECOMMENDATION 34)

That the ministère de la Justice undertake a thorough examination of the cost of child care in relation to the amount provided in the table and the method of calculation in cases where at least one parent has sole custody of at least one child and both parents have joint custody of at least another child.

THE IMPACT OF SHARED CUSTODY ON THE DIVISION OF SHARED EXPENSES

While the mechanism established in the form does not in itself cause any problems, the story is very different with respect to how it is applied by parents once the decision to adopt this type of custody arrangement has been made. In this regard, it is important to mention a few notions that might better explain the impact of shared custody on the division of shared expenses.

In sole custody cases, support contributions cover all expenses related to child care (housing, food, clothing, education, health, recreation, etc.). It follows that the non-custodial parent is only responsible for expenses that directly result from the exercise of his or her access rights. Furthermore, child care expenses, post-secondary education expenses and special expenses, as recorded at Line 406 of the Child Support Determination Form, are not open to interpretation since they are added to the level of support to be paid based on the disposable income of each parent (Line 407). Thus, in all cases, the parent receiving support must also cover these expenses, regardless of the custody arrangement, unless arranged otherwise in a specific agreement between the parties. For instance, it could be arranged that the non-custodial parent pay certain fees directly to a third party, such as a private school, a day care, etc.

On the other hand, in shared custody cases, the question of who should defray certain expenses is often open to interpretation. At issue here are shared costs linked to the purchase of certain goods and services, i.e. expenses which are incurred on a recurring basis (the purchase of clothing, health-care expenses, registration costs for a sporting activity, etc.) and are shared by the two households. Some contend that these expenses, like special expenses, should be covered by the parent receiving support, whereas others would argue that these costs should be divided according to the income of each parent.

The mechanism for dealing with cases of shared custody, found in Part 3 of the form, is based on the principle that support is paid to the lower-income parent. Support payments serve to make up for the gap between custody expenses and the basic parental support contribution so that each parent has the necessary resources to cover expenses related to child care. It follows that, once the level of support is determined at Line 534 ("Annual support payable"), **shared expenses, as defined above, should be covered by both parents according to the custody time of each one.** These expenses are independent of the parents' income. Support payments serve to balance out the cost of child care according to custody time so that each parent may then cover his or her share of expenses related to child care.

Thus the Regulation stipulates that each parent must cover these expenditures, when they arise, in proportion to custody time (40% to 60% according to the case); one party is then reimbursed by the other for these expenses according to a pre-determined arrangement. In practice, some people find this way of proceeding cumbersome and inappropriate. They are, however, free to establish their own payment system so long as it remains within the framework of the regulation. For instance, the parents might together estimate the annual cost of clothing, after which one party would give the other a lump sum covering his or her share of these expenses (40% to 60%, as the case may be). The parent having received this payment would subsequently be responsible for all clothing purchases.

BOTH SOLE AND SHARED CUSTODY INVOLVING TWO OR MORE CHILDREN

According to the statistics, parents with two or more children having chosen an arrangement whereby at least one parent has sole custody of at least one child and both parents have joint custody of at least another child represent 10% of all sample cases. In 7% of all cases, the parents have opted for sole exclusive custody of at least one child each, while 3% of parents share custody of two or more children.

Now then, the table was designed, and quite rightly so, to reflect the assumption that the cost of having two or more children is not twice or three times, etc. the cost of caring for only one child, provided obviously that the children in question live in the same home. The table takes into account economies of scale and the relative weight in terms of expenditures for each member of the family unit.

This reasoning cannot be applied in cases where at least one parent has sole custody of at least one child or both parents have joint custody of two or more children since each child is living in a different place. In all such cases, shouldn't calculations of support be based on the amount listed in the table corresponding to the real situation of each parent, i.e. the actual number of children living with each one?

Here is an example of what this might mean: if the family income for purposes of calculation is $40,000, and each parent has sole custody of one child, the annual level of support would currently be pegged at $3,855 per child, for a total of $7,710. However, since each party must maintain a residence equipped to receive a child on a full-time basis, it cannot be claimed that either of them is benefiting from economies of scale. Thus it only stands to reason that the amount provided by the table for a first child should be applied in the case of each party, i.e. $5,150 each, for a grand total of $10,300.

[Excerpt from the "Rapport du Comité de suivi du modèle québécois de fixation des pensions alimentaires pour enfants"]

Questions:

8.1 Are there additional costs linked to shared custody and when both parents have sole custody and there are more than two children?

8.2 Should the model and, in particular, the formula used to determine child support provide additional amounts for these additional costs?

8.3 Would a percentage of the basic parental contribution be adequate?

9. SUPPORT PAYMENTS FOR A CHILD OVER THE AGE OF MAJORITY

> That the ministère de la Justice continue to investigate the advisability of making the model applicable for all children who have attained the age of majority if the application for support is filed by one of the parents.

In spite of the fact that the case law tends to suggest that the model does not apply in cases filed under civil law or when children at or above the age of majority file for support on their own behalf, the Committee has observed that the court will, in such cases, nevertheless apply the provisions of Section 2 of the *Regulation respecting the determination of child support payments*. Thus the legal system does take into account all the circumstances of the children covered by this provision.

This being said, not all "dependent" children who have attained the age of majority actually benefit from the presumption established in article 587.1, *C.C.Q.*, whereby "the basic parental contribution... is presumed to meet the needs of the child and to be in proportion to the means of the parents." As has already been noted, under current law, the Quebec model applies to a child at or above the age of majority only insofar as the *Divorce Act* is applicable and the request for support, filed by one of the parents. Hence, it would appear that the Quebec model, which is part of civil law, is not applicable with respect to children who have attained the age of majority in situations covered by civil law, namely those involving common-law spouses, legal separations and annulments. In these same situations, neither parent may be presumed to hold a mandate for the child at or above the age of majority. It is pertinent to note that 50% of support orders now pertain to family matters covered by civil law, i.e. 10% for legal separations and 40% for common-law spouses.

In 1989, out of 37,612 new files pertaining to family matters, 62% involved divorce and 38%, legal separations, marriage annulments and common-law spouses. Ten years later, 1999 figures indicate that out of 37,075 new files in the same area, the percentage of divorce cases dropped to 50%, to be replaced, in the main, by cases involving common-law spouses.

A number of practitioners who completed the questionnaire mentioned that problems have arisen with the way the rules respecting children who have attained the age of majority have been applied and that such rules should be more clearly delineated. Some committee members would also like to see the model applied to children at or above the age of majority in order that one of the parents might be mandated to act on their behalf in matters covered by civil law.

It is important to continue to review the situation so as to determine whether or not the model should apply to dependent children who have attained the age of majority in civil law cases.

[Excerpt from the "Rapport du Comité de suivi du modèle québécois de fixation des pensions alimentaires pour enfants"]

Questions:

9.1 Should the Quebec model accord to children at or over the age of majority the same presumptions as those accorded to children covered under the model?

9.2 Should the Quebec model accord to parents of children at or over the age of majority, who are still their dependents, the same right of representation that is accorded them under divorce law, when this law no longer applies and when the support for these children is subject to the Quebec Civil Code?

INTRODUCTION

Workshops on custody and access were held in Yorkton on April 10, 2001, Regina on April 11, 2001, and Saskatoon on May 11, 2001. In addition, consultations were held with the Canadian Bar Association's Family Law South Section and the Family Law North Section on June 12 and 13, 2001, respectively. In total, 112 participants were involved. A list of participating organizations is provided in Table 1.

The following topics were discussed:

- best interests of children;
- roles and responsibilities of parents; and
- family violence.

SUMMARY OF THE DISCUSSIONS

BEST INTERESTS OF CHILDREN

What are children's needs when their parents separate/divorce?

Consistency and Predictability

Workshop participants felt there should be consistency for the child in daily activities: band, school, social activities, sports, community activities, his or her space, medical needs, pets, piano lessons, among others. Having a predictable schedule and calendar gives a child security—knowing where he or she will be and knowing, as much as possible what the routine will be. Some participants felt that a specified routine was really a parents' need rather than a children's need, and that all children had to know the rules in each home. It was also noted that children need the stability that comes from extended families and community activities. Also seen as contributing to the children's sense of security is a safe, conflict-free environment in which there is economic stability so that their physiological needs are met.

Participants indicated that children need to feel safe emotionally and psychologically through caring and loving relationships with both parents. Children need to have stable and mature adults in their lives. It was suggested that children may need more meaningful time with parents, although it was also suggested that children may need time *away* from both parents. Some participants noted that children's security should be balanced with opportunities to meet new people.

Safety

Participants noted that children's safety—physical, emotional, mental and spiritual—should be ensured. Children should not witness violence in the home.

Support

Support for children identified by participants included individual counselling and therapy, support from the extended family, assistance from an outside advocate (lawyer or lay advocate), representation apart from their parents, and the availability of both parents after separation. Some participants advocated educational programs for children of separating parents, to help them understand relationships and teach them life skills. Some participants believe that educational programs for children should be mandatory. Mentoring programs for children with families who have had positive experiences were mentioned. Support was also seen to be provided by the children's social circle of friends, and this is particularly important when children move out of the community. Participants noted that the support for children should recognize that they are in a process of grieving and should be allowed to grieve.

Communication with Children

Participants stressed that children must be told that the separation and events subsequent to it are not their fault, and that they are wanted and loved. Children need to be told honestly what is happening in their lives—in terms they can understand. Children need to know that both parents still love them and that it's all right for them to love the other parent. They also need to know that they are not alone.

Participants also stressed that children need to be able to safely communicate their feelings and say what they need. If children can't talk to their parents, there should be someone else (a social worker or other trained professional) they can talk to.

Allowing Children to be Children

Participants indicated that in order for children to be allowed to be children, they should not become a "counsellor" for either parent, be a partner for one parent, be asked to spy on one parent, be asked to take sides (explicitly or implicitly) or be used to gain power over the other parent. Children must be free of parental conflicts, decisions and manipulation. Children should not be "in the middle."

Participants said children need time to adjust. They should be free of worry about financial problems. Children should be treated with respect, understanding and consideration; indeed, parents should be models of respectful behaviour for the children. Parents must set their differences aside and focus on the children. They should be aware of the changes in the children's lives, such as loss of friends and team memberships. New adult relationships or new siblings must be introduced appropriately, with no pressure.

Parents should be encouraged to seek information and counselling to help them deal more effectively with their children's needs. Some participants suggested mandatory education programs for parents to show them how their actions affect their children. One suggestion was for couples to have a pre-conception contract setting out their responsibilities for children born out of that relationship.

Extended Family

Participants noted the need to foster and nourish the children's relationships with their extended family. Grandparents and siblings can provide support and continuity in children's lives. However, the extended family must also be aware of the children's needs for ongoing communication and support, keeping the children out of conflicts and providing a safe environment.

The Family Law System and Children

Participants felt the family law system needs to be dedicated to the children's best interests, as opposed to being an adversarial system. All who play a role in the family law system must be trained to understand how to meet children's needs. There also needs to be immediate access to court processes and other binding agreement processes for families and children. Accusations of abuse must be proven without a doubt, and the family law system needs to be sensitive to the root causes of deeper cultural issues. Some participants questioned whether listing "best interests" in the *Infants Act* in Saskatchewan had made any difference to children.

ROLES AND RESPONSIBILITIES OF PARENTS

What are the roles and responsibilities of parents during and after separation and divorce?

Structure and Consistency

Many participants described the need to provide structure, consistency and a stable environment in children's lives in terms of basic needs, such as food, clothing, daily activities, discipline, school attendance, special education, and medical, financial and social activities. With respect to financial obligations to children, it was suggested that support payments should not be tied to access. Some participants suggested that parents should develop a parenting plan that includes these needs. The plan would recognize each parent's areas of strength and interest. Structured routines were seen to provide security, control and predictability for children. Consistency means having both parents involved in the children's lives. Fostering cultural and spiritual needs to provide values and cultural continuity for children was also discussed. This could require flexibility of access on particular days for attending cultural events.

Parental and Family Relationships

A number of participants suggested that parents should recognize that each parent has particular strengths and positive attributes. Participants would encourage both parents to be involved equally in providing nurturing and financial support, recognizing factors that may affect financial status (e.g. their actual net income). Both parents should have access to the children, and it was noted that, while this may not be enforceable, it should be promoted. Parents need to promote shared responsibility for the children, including supporting and encouraging the children's relationship with the other parent. Participants felt that parents must be honest and candid about the goals they are pursuing as parents, and recognize that the children's interests may be separate. Decisions should be made in the best interests of the children. When possible, parents should stay out of the adversarial court system, but they should observe court orders and carry through with their commitments to the other parent and to the children.

All of this would demonstrate commitment and respect in role modelling. Some participants noted that children should not be negatively affected by economic issues between their parents. Also, financial payments should not be tied to access. Parents have an obligation to ensure that their children maintain contact and relationships with extended family members. Extended family members should also show the same rules of respect. It was mentioned that common-law and multiple relationships may also create problems for children.

Education and Support

Some participants emphasized that parents should educate themselves on the impacts of separation and divorce on children and their own responsibilities—legal, social and parenting. Parents should reach out for the help and support they may need in developing and maintaining a respectful relationship with the other parent, or to ensure they are meeting their own emotional and financial needs, and gaining coping and parenting skills. Family members were also mentioned as a form of support for parents in need of help. Some participants indicated that parenting programs should be mandated prior to divorce.

Communication with Children

It was suggested that parents should help children prepare for change and transitions by communicating with them in age-appropriate language. Some participants felt it was the parents' responsibility to give children coping skills, guidance and support; others felt these skills should be provided by others. Parents should reassure children that the separation or divorce was not their fault. Also, children, especially young children, should not have to decide with whom to live. There should be sensitivity to gender issues for older children. Some children's voices about access may best be heard through a social worker. It was mentioned that children should be educated about a parent's bad behaviour—not all parents are good parents. Communication should also be selective: children do not need to know everything. Parents must realize that children are learning from them at every moment. Some participants indicated that when parents were unable to communicate with their children, it was their responsibility to seek assistance. Parents were advised to listen carefully to what their children say about safety and security at the other parent's home.

Conflict Reduction

Some participants advised that parents should refrain from arguing around the children and keep children out of any conflict. It was felt that if conflict is dealt with in a healthy way, children could benefit. Parents should not use children as weapons or pawns to obtain the spoils of divorce or for retribution. And each parent must take responsibility for herself or himself unconditionally, regardless of the other parent's actions. Parents should avoid conflictual behaviour, such as unjustly accusing the other parent of heinous acts, or criticizing or undermining the other parent. It was suggested that parents should not make major decisions within the first six months of separation. Some participants emphasized that being honest and respectful would serve as a model for children regarding dispute resolution. Parents should "be the grown-up and let your child be the child."

Emotional Care

Parents should give their children unconditional love. Participants stressed that meeting the emotional needs of children includes providing love and nurturing the children, delaying personal needs for the sake of the children, letting go of anger, refraining from abuse, forgiving the other parent and fostering in the children a sense of belonging. Some participants felt that parents must recognize that kids are not "divorceable" and still need contact with the other parent and with other children. It was mentioned that parents who are together do not compete for the love of their children; likewise separating parents should refrain from competing. Providing a nurturing, comfortable and stable environment involving both parents is vital. Many participants indicated that a primary role of parents was to ensure that children were kept safe from physical and emotional harm.

What are some options that would assist parents to fulfill these obligations?

Services

Workshop participants described a number of services that could assist parents. Some early preventative services suggested included:

- pre-separation services, such as a mentoring program or wellness program for parents before they are in crisis or have assumed that the marriage is over;
- a pre-marriage certificate that includes parenting education, decisionmaking and conflict resolution;
- a revised community services booklet to be provided to parents in hospital when a baby is born; and
- a "divorce preparation" course similar to a marriage preparation course.

Other suggested services and programs for parents included:

- mediation that is accessible and affordable;
- communication and alternative dispute resolution programs;
- education on the impacts of separation and divorce on children;
- resources and supports in place for parents to help themselves;
- follow-up parenting courses for ongoing support and new knowledge or application;
- one-stop central personal intake service for getting information (can also use a toll-free number and a Web site);
- a central investigation unit to provide referrals to the family;

- Justice Department involvement in intakes, interviews with parents and children, referrals and recommendations (e.g. for counselling);
- custody and access assessments out of court (impartial party to meet with parents, children school official, the family doctor and others, and to make recommendations);
- parent support groups;
- community advocates for parents (highly visible person);
- free legal advice;
- transportation to access services;
- access money for parents to fulfil obligations;
- mandatory counselling or education for parents (although some participants argued that courts could better encourage counselling as a factor in decisionmaking, rather than make counselling mandatory);
- a place for supervised access (since orders can be in place where no supervised access centre is available);
- a safe place for parents to communicate about the best interests of their children (with a mediator or other qualified person);
- guidance on who to contact and how to respond in instances of custody and access violations;
- accessible, government-funded counselling;
- assistance with developing parenting plans before going to court;
- opportunity to develop parenting plans at any point in the process; and
- ongoing monitoring of families for years (e.g. by a social worker).

The programs mentioned for children included:

- free programs to teach children healthy ways of interaction, conflict resolution and coping skills;
- resources, programs and supports that are affordable or free;
- an advocate for the children;
- children's education courses (such as those provided at Roman Catholic family services) related to age groups for support, problem solving and grieving, and to teach coping skills, among other things.

The importance of sufficient funding was also emphasized. Insufficient funding was seen to cause delays, such as with custody and access reports. Without funding the realities cannot be addressed. Some participants felt that services should be coordinated with the police, the Crown, lawyers and prosecutors in high conflict cases. Enforcement agencies need clear guidelines on whether and how to respond to existing orders and access arrangements. A number of participants emphasized that services and guidelines to support the enforcement of access agreements are required.

Wraparound Approach

Some participants discussed a "wraparound approach" to providing services. This would include having a number of agencies involved with a family that would enhance a family's strengths, identify needs for improvement, and build on what the family needs. The family would decide who would be involved in service provision.

ACCESS, INFORMATION AND EDUCATION

Access to Services

Access to and availability of services were discussed. Some participants suggested making the referral and support system more accessible, e.g. in rural centres. Rural centres were also discussed as having specific service challenges: availability of and access to services, cultural and language needs, distance, and problems with group work in small communities, such as lack of privacy. Suggestions to ensure access included accessible legal advice, quick provisions of information, information in appropriate languages, affordable services, and the opportunity for parents in conflict to attend separate sessions.

Information Needs

Participants indicated that parents in dispute need early access to legislative and legal information as well as information on counselling and parenting assistance. Parents need to know what strengths they have and can build on. One suggestion was to update the Yorkton Community Services booklet with available services. Some parents are reluctant to seek assistance because they think they will be unable to meet their obligations. It was suggested that information for parents should also be available via a Web site and toll-free number. Participants noted that even experts and professionals need to know what is available.

A positive advertising or public relations campaign on television and radio and using posters was suggested to build awareness of the needs of children during separation, inform parents about access to services, promote the involvement of both parents in their children's lives, and provide positive messages about people going through separation or divorce. The information campaign should address the stigma placed on divorce and separation by the religious community and society in general.

Education

Education was seen as a tool to assist parents. In general, participants felt that parents needed education on dealing with the root causes of problems, making informed decisions about respectful ways to end a marriage, conflict resolution, assertiveness, developing a parenting plan, parenting and life skills, and children's experiences during divorce and separation. Some participants felt that education for parents should be mandatory before parents could file for divorce. Others questioned why education should be mandatory when the parties *had agreed to* a divorce. Still others felt that mandatory education might contribute to delay in maintenance applications.

California Masters Program

Participants also mentioned the California Masters Program that helps parents with court orders to work out issues as they arise and ensures that court orders are followed. This program includes some counselling and mediation.

Legislation

One suggestion from participants was that a legislative mechanism be employed outside of the *Child and Family Services Act* to avoid the stigma of dealing with a protection worker. One option would be to use the *Children's Law Act*. Participants suggested that a legislative approach should:

- promote working first with parents to discover the root causes of problems;
- include incentives for parents to carry out their responsibilities;
- include repercussions for parents who do not honour court orders;
- provide assistance to parents before they have to go to court;
- be more consensual and supportive rather than adversarial;
- include a clear policy statement;
- provide options other than court (e.g. a worker assigned to a family, a referee to assist in the interpretation of court orders, a child advocate); and
- include convictions for non-compliance with restraining orders.

It was pointed out that any legislative process may not help when one parent is undermining the parenting arrangement. Some participants noted that the terminology of *reasonable access* in a court order is a problem, since people who have court orders are generally not reasonable. Clearer rules and guidelines are needed for enforcement agencies to use.

The Court System

Some participants suggested that the wording of orders and agreements should begin with a foundation in the "best interests of the child" and with the assumption that parents will work together to parent their children. The wording should also be clear and provide specific guidelines to enforcement agencies to avoid situations in which parents call the police or social service for assistance and are then directed back to their lawyers and the costly and time-consuming court system. A system needs to be put into place that would allow parents to avoid going to court again and again—possibly with built-in reviews that provide flexibility and opportunities for change as children grow and the situation changes.

Some participants felt that someone in the court system needs to be listening to the children, but not expecting them to choose where to live. There should be a children's workshop so that children know they have a voice in the system.

Also discussed was the suggestion that the courts need to support the development of parenting plans, which would involve the parents writing down their children's needs before the plan is developed. Another suggestion was that there should be a separate court for family issues.

And it was mentioned that courts should be made affordable.

A Consensual Approach

There was some agreement among participants about exploring a consensual versus an adversarial approach to custody and access. Currently, courts are not seen as appropriate resources for resolving family disputes. A consensual approach could include collaborative law practices, including round table conferencing with families to create a controlled dialogue in which lawyers could provide advice based on their experience. Professionals would assist parents through times of crisis, with education and soothing support. Participants saw this as a kinder approach to custody and access. For this to work, resources and an infrastructure would need to be put in place and there would need to be a focus on non-adversarial thinking when dealing with children and parents. The approach would need to be holistic, involving professionals.

What messages about parenting responsibility do you think should be addressed in terminology and legislation?

The messages about parenting responsibility discussed in the Saskatchewan workshops have been organized according to options proposed in the consultation document, other potential terms, legislation, terminology change and the court system.

PROPOSED OPTIONS

Options 1 to 3. Much of the discussion at the workshops centred on removing the terms *custody* and *access*, with arguments largely for and some against this change. Very little distinction was made between options 1, 2 and 3 because the focus was on the broader discussion of the merits of changing the terminology.

Many participants indicated that the current terminology promotes adversarial win-lose situations, and invokes negative images of power and control. These terms focus on the rights of the parent, and particularly on the custodial parent, while the non-custodial parent becomes a "visitor" in the children's lives. Access was seen to imply a short duration and limited responsibility. A minority view was that the terms *custody* and *access* can lessen conflict (e.g. when there is an imbalance of power, granting custody can adjust the balance). It was pointed out that the terms *sole* and *joint custody* are the cause of much of litigation because custody is seen as a control issue (about a winner and loser, and money). It was noted that joint custody may not really be joint, in that one parent may have both primary residence and decisionmaking power. Some participants noted that, currently, parenting responsibilities are under the umbrella of joint custody, and doubted whether a name change would make any difference in how responsibilities were applied. What is needed is further specificity of the term *joint custody* and a process to handle issues not specifically covered.

Removing Custody *and* Access. The participants who wanted the terms *custody* and *access* removed felt that such a change would:

- focus on both parents parenting together all the time (this could include extended family);
- move away from the adversarial mindset;
- give parents responsibility rather than an award;
- promote a win-win approach;
- help parents change their attitudes;
- recognize in legislation that both parents have responsibilities for the children;
- take a shared approach to parenting; and
- recognize both parents as parents.

Parental Responsibility (Option 4). Many participants, though not all, opted for the use of the term *parental responsibility*. They felt the term makes a social statement about the responsibility for looking after the rights of children and caring for children. It was suggested that parental roles should be defined in general terms, because if all aspects of parental responsibility were included, the list of responsibilities would cover many pages. The term *parental responsibility* sends a message that the responsibility for parenting is for all the time, not just during access. It was noted that this option would give judges more power to list the parenting responsibilities, and could be employed if parents did not meet the agreements developed in the consensual approach.

Shared Parenting (Option 5). Some participants preferred the term *shared parenting*, with the focus on a primary parental caregiver. Others preferred it because it removes the focus from one or the other parent and places it on a shared role that refers to the day-to-day involvement of both parents. Some participants emphasized that shared parenting does not mean equal parenting; others felt that equal time should be a starting point. Some participants felt that parents who parented together before separation should continue to do so (except in cases of abuse). Following separation, some fathers want to become “super-dads” and this affects how the parties deal with one another. Parental behaviour should be examined in the context of prior, current and future intentions. It was also mentioned that shared parenting may help parents recognize their responsibilities and encourage access by both parents.

Other Potential Terms. Some participants felt that terms such as *caregiver* or *primary provider* could be used. Others liked the term *parenting time* in place of *access*. Some participants disagreed, noting that parental responsibility involves more than time. Some participants mentioned *parenting arrangements* to identify the roles and responsibilities of each parent. It was also noted that parents may compare plans and use these as a weapon. Also mentioned was the need to have separate concepts for decisionmaking about a child's life and residency.

Legislation. Some participants noted that legislation needs to recognize flexibility over time on changing family situations. Legislation should be clear on the interpretation of whatever terms are used, and should also make people accountable for lack of parenting.

Significance of Terminology Change. Some participants felt that changing the language would not make a difference. Some of these participants felt that education for parents, police and Revenue Canada staff, among others (to ensure that everyone agrees on the meanings of the terms) was more important and more likely to result in change than any change in the terminology itself. The point was made that rather than changing the terms, there should be clarification of what they mean. The important consideration is each parent's responsibility, but within the existing terminology. It was suggested that regardless of the terminology, the focus is on primary residency and decisionmaking. And it was noted that unless judicial thinking changes, changing the terminology would have no impact. If the terminology were changed, everyone involved in the family law system would need education to ensure that all situations receive the same treatment. The change would mean that child tax and spousal benefits would also have to be changed, since these are still related to who has the children. Similarly, the terminology in tax and associated legislation would need to be consistent and understood by all involved in the application of the child tax benefit.

Court System. One message was that parents need clarity in the form of specific orders regarding day-to-day parental responsibilities, both for the long and short terms. Courts need to take into account past, current and future needs of the children when making these decisions. This would help provide certainty for professionals working with the family as well as for the parents themselves. Another message was the need for a process to encourage parents to move from an adversarial arena to a more collaborative arena from the beginning, instead of expecting them to deal in an adversarial process initially and then later make a shift. Judges were seen to have a great influence on how parents view the situation.

Also required would be a consistent approach in resolving issues of where children will live or how parents will parent, ideally to be resolved before parents go to court. It was suggested that as many preventive measures as possible be employed before courts are used. Participants indicated that if a process of greater parental accountability is put in place, consideration would have to be given to children's needs if the system is harsh on parents.

FAMILY VIOLENCE

What are the issues facing children who experience family violence?

Loss of Feelings of Safety and Security

Participants recognized that children experiencing violence are affected by a loss of safety and security—physically, emotionally and psychologically. They may feel lonely and isolated, sometimes with feelings of helplessness, shame or self-blame. Many children are unprotected and have no safe place to go to. Children are often silent victims: many parents assume that children cannot see or feel what is going on, but they do. It was pointed out that children may not know how to handle conflict at a time when there may be a lack of parental guidance. Children may lose trust in those they love when their role models turn out to be abusers. Lower self-esteem was mentioned as another effect on children experiencing violence. It was mentioned that situations of violence and substance abuse prevent children from engaging in childhood activities—survival becomes a priority. When violence causes one or more relocations in a child's life, he or she may have no sense of belonging, no stability.

Participants also indicated that if children are removed from a family because of violence, they may think that they have done something wrong. Children may also be confused about love, (for example, when they think that their parents may be violent at times, but still love them). Family loyalties may be called into question if children need to choose sides. In violent family situations, children may be neglected or even hospitalized. Children may live in fear, waiting for the next crisis or fearing that they will lose one or both parents. There may also be a period of uncertainty for children when an abusing parent has been away (e.g. in jail) and is returning.

Responses to Experiencing Violence

Participants described the trauma experienced by children in violent family situations in a long list: stress, mood swings, hallucinations, hiding, inability to focus, dissociative behaviours, high anxiety levels, loss of spontaneity, suppressed emotion, "walking on eggshells," loss of control, and eating disorders. Children may or may not become desensitized to violence. There may be secrecy and shame—children don't want others to know. Following exposure to family violence, children may have difficulty taking responsibility for their actions. They can become aggressive or defiant, or withdrawn and victimized. Children may become violent to other adults or animals—they may see violence as the norm.

The role of children as protectors of the abused adult was mentioned. Participants noted that children may experience a sense of guilt (e.g. they feel they should have been able to protect the parent). On the other hand, children may be involved in the abuse of the other parent. Children may be embarrassed to bring friends home, adding to the sense of isolation from friends and community. Peers in school may pick on children (e.g. because they have no clean clothes). Children may also have the additional responsibility of looking after siblings when parents are drinking or fighting, or both. Participants mentioned that children may have problems with attention in school, either from lack of sleep or worry. There may be an ongoing fear of losing a parent. It was noted that children may not have any parent, since the abusing parent takes away the other parent's ability to parent.

Participants noted that the long-term effects on children from exposure to family violence may lead to delays in cognitive, emotional and motor skills. Children experiencing violence may be more susceptible to drug or alcohol abuse. Participants noted that in some cases, children may turn to substance abuse, run away, become prostitutes, become depressed and commit suicide. Violent situations negatively affect children's views of what would normally be supports: police and counsellors, for example. Family violence can also affect children's long-term friendships or job prospects, and may have an impact on healthy sexual development and belief systems.

Considerations for Addressing Family Violence

Participants indicated that there is a lack of services for parents and children in situations of family violence (or there are long waiting lists when the need is immediate). They suggested that children need professionals (lawyers and judges) who have experience in dealing with violence. In turn these professionals need clear policies for dealing with family violence. Some participants suggested that false allegations need to be looked at seriously and strong penalties applied for allegations proven false or strong repercussions if proven true. The risk to the child (versus the other parent) needs to be verified through investigation. The issue of preventive work (such as education on healthy family dynamics, conflict resolution) for families prior to separation was also mentioned. There should be safe contact for the child with the abusing parent—the children need to know the parent is all right. Children need to be taught positive coping skills. When children have become very violent, anger management strategies will be insufficient; the children's belief systems need to be changed. It was pointed out that for a definition of abuse, there is little difference in the effects on children in witnessing and experiencing violence.

Factors Leading to Violence

Participants' views on the factors that increase the likelihood of family violence include substance abuse, poverty, loss of income from one spouse, and loss of the other parent in the home (additional responsibilities on the remaining parent). It was also noted that, over time, an abused parent may also become an abuser.

What messages would you like to see reflected in legislation regarding family violence?

Legislation

Recognition. Participants felt that legislation should recognize that family abuse and neglect are not acceptable, and that children's well-being and safety (emotional, physical and psychological) must come first. This would include having the words *family violence* included in the legislation. One suggestion was that violence come under the heading of "best interests of the child" in the new *Divorce Act*, but this could be viewed as too weak. Alternatively, violence could be considered in the context of past conduct, in that courts shall or may consider it. Judges would evaluate whether it is an isolated or chronic situation. Some participants said legislation should reflect the notion that people are accountable for their actions regarding violence, but they had no suggestions about how people could be made to take more responsibility for their actions.

Allegations of Violence. Some participants suggested that false allegations and the alienation of one parent are also forms of emotional abuse; others cautioned that people should not be deterred from making allegations of abuse. Many participants felt that all allegations need to be investigated seriously. Some participants indicated that laws to deal with family violence are in place, but are not being enforced. It was suggested that all levels of family abuse issues must be considered in family law matters. Some felt that legislation should include consequences for false allegations. Some participants said that legislation and judges must consider the future and overall development of children (i.e. are we perpetuating the cycle of abuse by allowing family violence to occur?).

A number of participants preferred an approach in which legislation on violence reflected a balance between "setting the bar too high" (perfection leading to system overload) or too low (ineffective for the best interests of children). Some participants felt that people sometimes go through tough times that lead to isolated instances of violence, and that legislation should, therefore, only recognize patterned and ongoing abusive behaviour. Others stated that there should be zero tolerance for any violence, and definite consequences for abusers. Some participants stressed that parents should be viewed as innocent until proven guilty, while at the same time victims should be protected. Others emphasized that the risk to children should be determined quickly by informed professionals, and also noted that consistent messages and a consistent approach were needed in legislation. Participants indicated that the legislation should ensure that violence towards children is reviewed before shared parenting is granted.

Comments on Options

Make No Change to the Current Law (Option 1). No specific comments were recorded at the workshops related to option 1.

Violence as a Factor (Options 2 and 3). Many participants indicated that legislation should take family violence into account in determining family relationships. Some participants said violence *must* be considered (option 3) because both parents and children are affected and action needs to be taken immediately. Others preferred option 2 (that violence *may* be considered) because family violence could be used as an argument for custody and access. Still others suggested that for sporadic or isolated incidents of abuse, family violence *may* be a consideration, whereas for ongoing physical violence, it *must* be a consideration. Some participants felt that attempts to create statutory limits on judicial discretion need to be approached cautiously. Wide discretion allows the courts to deal with unique cases. Some suggested that the judges' hands not be tied (i.e. they preferred option 2)

Rebuttable Presumption (Option 4). Some participants indicated that rebuttable presumptions in legislation are abhorrent, saying that these complicate matters and create judicial traps.

Maximum Contact (Option 5). Some participants suggested that maximum contact should be weighed in light of family violence and clearly set out for judges. People are concerned that withholding access will cost them later when maximum contact is considered for custody.

Court System. Some participants saw a big difference in the way individual judges view family violence; to them, violence is more of a right than a protection issue. Some participants noted that family violence should not be used as a weapon in custody issues. In considering the best interests of children, the criminal court system should be avoided to the greatest extent possible. One suggestion was that judges should be made to consider violence for determining access. Another was that a panel of judges (or experts such as child psychologists) could decide custody and other questions related to families. One suggestion was that courts could play a role in conflict resolution, such as adjourning the matter to be heard later by the same judge or to monitor compliance. It was also noted that pre-trial conferences could be helpful, if not held too early for the effective resolution of issues. Even if pre-trial conferences do not lead to resolution, they might help to better manage conflict from then on. Some participants would like to see a less formal atmosphere for court proceedings. Some participants said if legislation changes, it should be backed up with the related necessary services (e.g. assessments and counselling) in all areas of the province. If assessments take too long, the best interests of children are not met.

Definition. Many agreed that clear criteria for a definition of violence were needed. It was suggested that such a definition could be developed through a testimony of experts in case law and precedence. Some participants indicated that courts need specific indicators of violence, including emotional abuse (e.g. there may be no witnesses, no previous reports, but covert harassment may have been chronic over the years). This may be difficult to prove. It was suggested that there should be consequences for emotional harassment.

Services

Resources. One suggestion was that the law does not need to be changed, but rather that more money should be put into services, particularly in a proactive approach. Agencies are generally seen to be effective, but often not enough resources are available for them to continue to provide support (e.g. response staff often do not have access to files after hours). A need for partnering between provincial government agencies was identified by participants for more effective response. It was noted that local agencies were given the message to partner and use the wrap-around approach, but resources and funding are not available. Some participants suggested a continuum of services would be preferable to "one service fits all."

Counselling and Education. Counselling was suggested for abusers, victims and children. Children should have early intervention and education (e.g. a school course on conflict resolution and violent behaviour). Services for children were seen as a way to "fix the children so that we don't have to deal with them as adults." Parent education on anger management and abuse and neglect was also proposed for abusers and victims. It was suggested that caseworkers could be involved to monitor both perpetrator and victim. Participants noted that taking a course alone may not result in a change in behaviour, and emphasized the need for parents to demonstrate a change in abusive behaviour or face access denial. Some participants suggested mandatory counselling for first time abusers, such as exposure to "alternatives to violence" programs. Participants identified a need for support services to be available on evenings and weekends when the risks to children increase. Clear guidelines are needed for professionals dealing with violent situations regarding who responds and what happens to the child. Some participants felt that victims should be able to choose informal supports in addition to the formal supports (which are often only short-term). Informal (unpaid) supports are seen to be important in the long run. It was suggested that judges be educated about what they should take into account when making decisions on family abuse issues. If there is to be new legislation, judges need to be informed about it.

Supervised Access. It was suggested that removing children from an abusive home might actually be punishing the children. Some participants suggested that supervised access provides children with safe contact with a parent, as well as providing the opportunity for professionals to assess change. Others wondered whether behaviour change could be assessed this way, and suggested that behaviour must be monitored over time. Others echoed the sentiment, indicating that courses on violence and substance abuse are not enough to provide an abuser with access. They felt there should be proof of change over time. And, there should be consequences for people who do not go to programs for abusers.

Some participants said clear agreements on pick-ups and drop-offs would increase the chances of safety for family members. Also, the question was raised whether a person who is not a danger to children (i.e. only to the spouse) should have access to the children. Some participants felt that giving a parent access to the children means access to the mother with the associated potential for violence or exerting control. Others felt that children are affected by violence to a parent, even if they themselves are not abused. Some participants felt it would be impossible for a man to be violent to his wife and not to his children. Some participants also identified the need for an expanded supervised access program (with a therapeutic education component) to allow for safe access by the parent.

Wraparound Process. Participants discussed a wraparound process to help promote a healthy environment for a family. This approach would build on the strengths of individuals in the family and provide support for both abuser and abused. In this approach, an agency would bring together family members, neighbours, relatives and service agencies to work on the family's safety, social and financial well-being.

Table 1: Organizations Represented at the Saskatoon Workshop

Catholic Family Services of Saskatoon
Child and Youth Services
Child Find Saskatchewan
Law Society of Saskatchewan
Lloydminster Interval House
Migneault Gibbons & Greenwood
Northwest Friendship Centre
Partnership for Violence Free Communities
Prince Albert Counselling and Mediation
Prince Albert Mental Health Services
Public Legal Education Association
Saskatchewan Department of Justice (Family Law Support Services)
Saskatchewan Legal Aid Offices
Saskatchewan Social Services
Saskatoon City Police

Table 2: Organizations Represented at the Yorkton Workshop

Big Brothers and Sisters
Boys and Girls Clubs
Parkland ECIP, Child Action Plan
Saskatchewan Department of Justice (Family Law Support Services)
Saskatchewan Legal Aid Offices
Saskatchewan Social Services
Shelwin House
SIGN
Yorkdale School Division
Yorkton City RCMP
Yorkton Friendship Centre
Yorkton Mental Health Services
Yorkton Rural RCMP
Yorkton School Division (Public and No. 93)

Table 3: Organizations Represented at the Regina Workshop

Canadian Bar Association, Family Law South
Child and Youth Services
Circle Project Childcare
Family Services, Regina
Law Society of Saskatchewan
Moose Jaw Transition House
National Shared Parenting Association
Regina Catholic Schools
Regina City Legal Aid
Regina Police Services, Peyakowak
Regina Police Services, Violence Intervention Program
Regina Public Schools
Regina Shared Parenting Network
Saskatchewan Action Committee on the Status of Women
Saskatchewan Coalition Against Family Violence
Saskatchewan Council on Children
Saskatchewan Department of Justice (Family Law Support Services)
Saskatchewan Department of Justice (Legislative Services)
Saskatchewan Department of Social Services
SBWAN
SCHD Mental Health
STOPS to Violence
YWCA Isabel Johnson Shelter

TH5

INTRODUCTION

Two workshops on custody and access were held in Whitehorse, on June 11, 2001. Five lawyers attended the morning session, and nine Yukon government social service providers and representatives of non-governmental organizations attended the afternoon session.

The following topics were discussed:

- best interests of children;
- roles and responsibilities of parents;
- family violence; and
- meeting access responsibilities.

SUMMARY OF THE DISCUSSIONS

At the beginning of the discussions on the "best interests of children" it was noted that, in Yukon, this is the paramount consideration in section 1 of the *Children's Act* (RSYT 1986 c.22 sec.30). In addition, a recent amendment to the Act now clearly identifies grandparents as being among those who can apply for custody of or access to children.

Some participants agreed that this change was especially important in Yukon because grandparents in First Nations communities are more involved in raising grandchildren than grandparents in non-Native communities. It was noted that the Grandparents' Rights Association was pleased with the change.

BEST INTEREST OF CHILDREN

What are children's needs when their parents separate?

Participants agreed on a number of issues concerning children and their needs during parental separation. Participants agreed that in normal cases (when abuse does not exist) children want to be with both parents.

Participants said that a process is needed to allow both parents to provide the attention and care their children need. It was suggested that in some cases of violence the law should not "empower" either parent because the children then become pawns.

Maximum Contact with Both Parents

Participants at both workshops felt strongly that children should have maximum contact with both parents (subject to safety and violence issues) when their parents separate. Participants said maximum contact should, unless clear evidence shows otherwise, result in a shared parenting arrangement, and should be in place from the outset. However, participants were very clear that maximum contact should be balanced with the need to provide a stable home for the children.

Joint Custody Arrangements

Participants suggested that parents need to be flexible with schedules in joint custody arrangements. For example, for each parent to insist on equal time with the children is not always in the children's best interests. School activities, the location of school, the location of parents, and illness are factors that can affect parents' time with children. Participants argued that flexibility and good communication are essential if joint custody arrangements are to be responsive to children's activities and needs. Participants said that "joint custody" means a number of things to parents that are not always in the best interest of the children. For example, parents will often demand that time spent with children be allocated equally.

Mediation

Participants agreed that mediation is less confrontational and better addresses the best interests of children. Participants said that the law should be designed to facilitate the mediation and settlement of parental break-ups outside the courts, and that the law should not merely be a "backdrop" or alternative to a mediated process. Most participants in both workshops agreed that mediation should be mandatory, as is the case in some American states.

Education Programs

Participants agreed that the most effective mechanism for addressing children's needs is parent education. Education programs can demonstrate and emphasize the impact of separation and divorce on children. The lawyers cited studies that have shown that when parents take parent education programs they are more successful in mediation. The program *For the Sake of the Children* is currently in use in Yukon. An important component of the program is communication skills. The participants discussed making such programs mandatory, and noted that mediation is currently mandatory in Alberta. The lawyers felt educational programs for lawyers and judges would also be beneficial, especially with regard to mediation and alternative dispute resolution.

Mobility Issues: Moving Out of the Yukon Territory

Many people living in Yukon are not originally from the North; therefore, there is a lot of migration to and from Yukon. Participants agreed that because of this migration, mobility is very important for Yukon parents who separate and divorce. For example, when parents separate or divorce, one parent often decides that he or she no longer wants to or cannot remain in the territory. One parent might have to leave for employment reasons. The implications are that children will have a long-distance relationship with at least one parent and "maximum contact" will be difficult. Participants did not agree about which should carry more weight: the best interests of the children or the rights of parents to get on with their lives.

ROLES AND RESPONSIBILITIES OF PARENTS

What factors enable good parenting after separation or divorce?

Civil Relationship

Participants said that one of the most important aspects of good parenting after separation or divorce was ex-partners maintaining a civil relationship. In addition, participants listed maturity, good judgment and their ability to separate their issues from their children's issues as important factors in good parenting. The participants also suggested counselling for parents to promote good parenting after separation.

Dealing Independently with Separation and Parenting Agreements

The lawyers who participated in the morning workshop advocated changing the process of creating separation and parenting agreements. They argued that the separation agreements and parenting agreements should be divided into two documents and dealt with through two independent processes. This would allow an ongoing parenting relationship to be more quickly settled while aspects of the separation agreement are being negotiated. Participants felt this was important because often separation or divorce cases in Yukon involve small family businesses, which can complicate and prolong negotiations.

Parenting agreements should be forward-looking documents that deal with an ongoing and dynamic relationship for parenting. Participants suggested that parenting agreements should be re-examined regularly.

Focus on the Needs, Interests and Rights of Children

Participants said that the needs and rights of children should be paramount to foster better parenting. Participants also said that moving the legal process of separation away from an adversarial approach would create a more positive environment for parenting after separation. Such a change might deter some parents from using their children as pawns in an attempt to get a better settlement from their ex-partners. Participants agreed that mediation could contribute to good parenting because it addresses children's interests, and parents seldom disagree about what their children need.

Awareness of Existing Services

Greater Use and Access Issues

Participants felt that Yukon has adequate services to support families experiencing separation and divorce; however, people do not always use these services. Some participants felt that mediation is one service that should be expanded. Many of the participants also felt that mediation should be mandatory, at least for an initial session.

Improvements to Services

A Non-adversarial Approach

Participants in the lawyers' session felt that lawyers can often be a problem when they become involved in separation and divorce cases. One participant said that some lawyers have a "winning and losing" mentality, and focus primarily on how to get the "best deal" for their clients. In such cases, the participants felt that lawyers frequently aggravate the problem.

The lawyers said that a less adversarial system, but one that still allows individuals going through a mediated separation or divorce to have an advocate acting on their behalf might work better than the current court system. As an example, participants mentioned lawyers in Alberta who will support clients in mediated or other non-confrontational processes, but will not take their case to court.

New Terminology

Using Positive Language

Participants felt that language is problematic. Many terms, such as *sole*, *sole custody* and *access,* have negative connotations and are adversarial. As alternatives, participants preferred such terms as *shared parenting*, *living arrangements*, *joint parenting*, and *primary* or *main residence*. The lawyers also felt that consistent terminology should be used in the child support guidelines because having different terms in the guidelines and the legislation would be confusing.

Looking at the Law

Option 4

Replace the current legislative terminology: introduce the new term and concept of *parental responsibility*.

The lawyers who participated in the morning session felt that option 4 was the best option, because it gives judges the broad ability to define in each case what parental responsibility should be. Participants also felt that option 4 provides the most flexibility for all concerned, and that it would still allow for children to have maximum contact after the parents' separation.

The participants in the afternoon session did not identify an option that they preferred. Rather, they said that terminology and language was not that important because most of their clients were not familiar with what the terms mean.

Participants noted that in option 2 there should be a number of additions made to the open-ended list that describes *custody*, such as the responsibility for meeting children's social, recreational, and current educational needs.

FAMILY VIOLENCE

How well does the family law system promote the safety of children?

The participants discussed the fact there is no Yukon legislation that requires that violence be considered when the courts make parenting decisions. A participant noted that there is a law in Newfoundland and the Northwest Territories requiring a judge hearing a custody or access application to take family violence into account. Some participants felt that the court system does not allow a person to enrol in a program, such as one on anger management, until the matter is disposed of. (A representative from the Yukon Department of Justice clarified that it is not the court system that disallows enrolment and restricts participation, but the programs themselves.)

This is a problem, participants said, because people must sometimes wait months before receiving the help they need.

Looking at the Law

The participants discussed the issue of family violence and whether it should be a factor in determining children's residence or parental access. Some participants felt it must be considered. The participating lawyers also discussed the need for clear definitions of *family violence* (for example, a clear distinction between *domestic violence* and *family violence*). Some of the lawyers felt that it was important to add, "as witnessed by the children" to one question in the discussion guide (i.e. establish a rebuttable presumption of limited parental contact and a limited decisionmaking role for a parent who has committed family violence *as witnessed by the children*). Some participants felt that if a parent is violent toward his or her spouse when the children are not around, then the question needs to be asked whether that parent can still be a good parent or at least a good non-custodial parent.

Looking at Services

Participants agreed that the Yukon government needs to provide easier access to services for people devastated by a sudden break-up. Although participants did know that the services do exist, they felt that the public is not always aware of them and that the government needs to do a better job of making them readily available. Participants agreed that when families break up, three things result: poverty, conflict (sometimes violence) and diminished parenting. Participants pointed out that it is difficult for parents to take care of their children when they are not getting the mental health support they need for themselves. If there were a better way to provide parents with support, they might be able to function better as parents. One suggestion was that Family and Children's Services, a branch of the Yukon government's Department of Health and Social Services, pay for private mental health counselling.

Participants also felt that mandatory settlement conferences at some stage would be beneficial. The lawyers agreed that the legal system should facilitate a process whereby the legal system is not required for decisions to be made. This could be achieved through settlement conferences, mandatory education and mandatory mediation, among others.

MEETING ACCESS RESPONSIBILITIES

Looking at Services

Participants agreed that the family law system does not successfully promote the meeting of access responsibilities. The law is not very well enforced, neither when one parent denies access to the other, nor when parents do not fulfil their access responsibilities. The participants felt that it was important to raise these issues and discuss them in the context of the child support guidelines. It was agreed that money and the economics of child support are very important and should not be overlooked in this consultation.

Participants felt that a better long-term approach might be to allow the children to make their own choices about access. These choices could be made through a process of supervised access. Participants noted that children are influenced and will try to please the custodial parent most of the time. Some participants felt that children need time to develop their own opinion, free from the influence of others.

One of the services identified as not available in Yukon was a facility for supervised access.

Participants also spoke of the need for grandparents to have access to their grandchildren.

Putting Children's Interests First

APPENDIX D:

List of Briefs and
Background Materials Received

The following tables list the materials received from organizations for the consultations on custody and access. Many lengthy submissions were also received from individuals but are not detailed in this appendix in order to preserve their privacy and that of their families. All submissions received from organizations and from individuals before the deadline of July 6, 2001, were taken into account in the current report. Submissions received after July 6, were forwarded directly to the Department of Justice Canada for consideration.

Table 1: Briefs Received From National Organizations

Organization	Title of Brief
Pauktuutit, Inuit Women's Association of Canada	Aboriginal Workshop on Custody and Access, The Westin Hotel, Ottawa, June 25, 2001
Assembly of First Nations	A Brief to Special Joint Committee on Child Custody and Access
National Action Committee on the Status of Women	Untitled
National Association of Women and the Law	Brief Submitted to the Federal/Provincial/Territorial Working Group on Family Law by the Ontario Women's Network on Custody and Access
National Family Law Section, Canadian Bar Association	Submission on *Divorce Act* Reform

Table 2: Briefs Received From Other Organizations

Organization	Title of Brief
	Rights of Children of Separating or Divorcing Families
Family Court	Education in Family Law Strategies by Judges Skilled in the Area, Empathetic to Children's Needs
Ann Davis Transition Society	Untitled
B.C. Association of Specialized Victim Assistance and Counselling Programs	Untitled
B.C. Institute Against Family Violence	Untitled
Campbell River Relationship and Sexual Violence Response Committee	Untitled
Concerned Parents	Untitled
Fraserside Community Services Society	Untitled
Howe Sound Women's Centre	Untitled
Immigrant Women/Immigrant Services Society	Untitled
Kids Turn of Greater Vancouver	Access Responsibilities
Kids Turn of Greater Vancouver	Family Violence
South Peace Community Resources Society	Untitled
Specialized Victim Support Services	Untitled

Table 2: Briefs Received From Other Organizations (cont'd)

Organization	Title of Brief
The Vancouver Coordination Committee on Violence Against Women in Relationships	Ensuring Safety of Women and Children in the *Divorce Act*: Recommendations for Legislative Reform
Vancouver and Lower Mainland Multicultural Family Support Services Society	Untitled
Vancouver Custody and Access Support and Advocacy Association	Changes to Canada's *Divorce Act*
Vancouver Rape Relief and Women's Shelter	Vancouver Rape Relief and Women's Shelter Brief to the Federal/Provincial/Territorial Family Law Committee on Child Custody and Access
Vancouver Status of Women	Untitled
Victoria Men's Centre	Victoria Men's Centre Submission to the Federal/Territorial Custody and Access Workshops, Victoria, June 13, 2001
Darrin White Family Foundation Inc.	Untitled
Fort Garry Women's Resource Centre	Child Custody, Access and Abuse: Women's Stories
Legal Aid Manitoba	Untitled
Dalhousie Legal Aid Service	Submission to the Federal-Provincial Consultation on Child Custody and Access
Picton County Women's Centre	Untitled
Women's Centres Connect	Response to Custody, Access and Support in Canada: Putting Children's Interests First
Family Transition Place (Dufferin)	Untitled
Haldimand–Norfolk Women's Services	Untitled
Northumberland Services for Women	Comments on Consultation Paper
Ontario Women's Justice Network	Brief to the Federal, Provincial, Territorial Family Law Committee on Custody, Access and Child Support
Regional Coordinating Committee to End Violence Against Women	Feedback re: Ottawa Consultation, June 6, 2001
The London Coordinating Committee to End Women Abuse	Untitled
Violence Against Women Management Committee of Ottawa	Comments on the Consultation Document and Consultation Process
P.E.I. Advisory Council on the Status of Women	Discussion Notes
Assistance aux femmes de Montréal/Montréal Women's Aid	Réaction au projet de modifications à la *Loi sur le divorce*
Regroupement provincial des maisons d'hébergement et de transition pour femmes victimes de violence conjugale	Les droits de garde et de visite en situation de violence conjugale
Adelle House	Untitled
Saskatchewan Battered Women's Advocacy Network	Custody or Control? Saskatchewan Women's Experiences

Table 3: Background Materials Received

Organization	Title of Brief
	Family Law Reform Act 1995, Australia
	Family Law Court in the Act, Australia
Ad Hoc Committee on Custody and Access Reform	A Brief to the Special Joint Committee on Child Custody and Access Reform, April 1998
Special Joint Committee on Child Custody and Access	The Special Joint Committee's Report, *For the Sake of the Children*, Key Concerns About the Recommendations
Battered Women's Support Services	The *Divorce Act*, Custody and Access: A Brief to the Special Joint Senate-Commons Committee on Custody and Access
Nanaimo Men's Resource Centre	Legal and Psychological Management of Cases with an Alienated Child
Child and Family Services Research Group, University of Manitoba	Best Practices in Parent Information and Education Programs After Separation and Divorce
The Provincial Advisory Council on the Status of Women	A Submission to the Special Joint Committee of the Senate and the House of Commons on Child Custody and Access
Applied Research Branch Strategic Policy, Human Resources Development Canada	Children and Lone-Mother Families: An Investigation of Factors Influencing Child Well-being
Applied Research Branch Strategic Policy, Human Resources Development Canada	Mediating Factors in Child Development Outcomes: Children in Lone-parent Families
Applied Research Branch Strategic Policy, Human Resources Development Canada	Family Relationships and Children's School Achievement: Data from the National Longitudinal Survey of Children and Youth
Applied Research Branch Strategic Policy, Human Resources and Development Canada	Understanding the Contribution of Multiple Risk Factors on Child Development at Various Ages
Canadian Centre for Justice Statistics	Family Violence in Canada: A Statistical Profile 2000
Canadian Citizen's Free Press	Canada Court Watch Reports
National Council of Women of Canada	Brief to Special Joint Committee on Child Custody and Access
Submitted at Ottawa Consultation	Brochure: Guide juridique de la séparation et du divorce à l'usage des enfants.
Submitted at Ottawa Consultation	Brochure: Le garde et le droit de visite
Submitted at Ottawa Consultation	Domestic Violence Studies
Submitted at Ottawa Consultation	References Examining Assaults by Women on Their Spouses or Male Partners: An Annotated Bibliography

Table 4: Briefs Received After July 6, 2001 (forwarded to the Department of Justice Canada)

Organization	Title of Brief
Action B.C.	Comments re: Custody, Access and Child Support in Canada Survey
Alberta Council of Women's Shelters	Untitled
Barreau du Québec	Mémoire sur les droits de garde et de visite et les pensions alimentaires pour enfants
Barreau du Québec	L'intérêt de l'enfant d'abord: Droits de garde et de visite et pensions alimentaires pour enfants : Collogue du 8 juin 2001
Battered Women's Support Services	Untitled
Chambre des notaires du Québec	Commentaires concernant les documents préparés par le Comité fédéral/provincial/territorial sur le droit de la famille
Esquimalt Military Family Resource Centre	Untitled
Family of Men Support Society	Untitled
Gloucester Centre for Community Resources	Untitled
Groupe d'entraide aux pères et de soutien à l'enfant inc.	Consultation fédérale/provinciale/territoriale sur la garde, le droit de visite et les pensions alimentaires
La Meridienne	Untitled
Médiation Professionelle de l'Estrie	Consultation: L'exercise et le respect du droit de visite et de sortie
Moose Jaw–Thunder Creek Health District	Untitled
Ordre des pyschologues du Québec	Commentaires des délégués de l'Ordre des pyschologues du Québec
Regional Coordinating Committee to End Violence Against Women	Untitled
The British Columbia Public Interest Advocacy Centre, on behalf of the Federated Anti-poverty Groups of B.C.	Federal/Provincial/Territorial Consultations on Custody, Access and Child Support, Submission to the Minister of Justice of the Federated Anti-poverty Groups of British Columbia
Victoria Women's Transition House, Children Who Witness Abuse Program	Untitled